

Bloomberg
BNA

2017 Survey of State Tax Departments

Special Report
**Multistate
Tax Report[®]**

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Executive Summary

2017 SURVEY OF STATE TAX DEPARTMENTS Executive Summary and Highlights

In Bloomberg BNA's 17th annual *Survey of State Tax Departments*, senior state tax officials answered questions clarifying how their jurisdictions are taxing several gray areas of corporate income and sales and use tax, with an emphasis on nexus policies and the sourcing of receipts for income tax purposes. Almost every state, as well as the District of Columbia and New York City, participated in the survey. Only Ohio did not participate this year. Key findings from this year's survey are summarized below.

Corporate Income Tax Nexus

- This year, 13 states indicated that their nexus standard is based on factor presence. Of these states, five indicated that they conform, in whole or in part, to the Multistate Tax Compact's model statute, *Factor Presence Nexus Standard for Business Activity*. Alabama and Tennessee indicated that they generally conform to the model statute, while California, Colorado and Connecticut indicated that they only partially conform to the model statute.
- For the first time, we asked states a series of questions regarding adoption of the Multistate Tax Commission Statements on Pub. L. No. 86-272. Nine states indicated that they were a signatory to the Phase II Statement; four states indicated that they were a signatory to the Phase II Statement with additions or exceptions and two states indicated that they were not a signatory to the Phase II Statement but have a similar law.
- This year, we expanded our questions regarding ownership of pass-through entities by asking states to indicate whether nexus would be created as a result of an ownership interest in a pass-through entity which limits its activities in the state to those that generate passive income. Thirty-one states indicated that a limited interest in an entity that manages intangible investments would create nexus, while 38 states indicated that a limited interest in an entity that manages real property would create nexus. Similar questions were asked regarding ownership of a managing interest in such entities.
- Twenty-two states indicated that employees of an out-of-state corporation flying into the state, one to four times in a year, on a commercial airline for business purposes would be sufficient by itself to create nexus.

Sourcing

- We asked states to identify the sourcing method used to source receipts from cloud computing or Software as a Service transactions. Nineteen states indicated that they use market-based sourcing, nine states reported that they use cost of performance and four states said that they use a sourcing method other than cost of performance or market-based sourcing.
- The survey also asks states whether they have industry-specific sourcing rules for a number of different industries. According to this year's responses, the most popular industries for which states have special sourcing rules are airlines (33 states), trucking companies (32 states) and banks and financial services companies (31 states).

Pass-Through Entities

- According to the survey results, 18 states classify guaranteed payments for services, other than personal or professional services, as business income. Only two states indicated that they classify these payments as nonbusiness income. Similar questions were asked about guaranteed payments for personal and professional services and use of partnership capital.
- This year, we asked states about the tax treatment of gain recognized by the disposition of an interest in a pass-through entity doing business in their state. Twenty-eight states indicated that they would impose income tax on the gain recognized by the disposition of an out-of-state corporation's limited interest in a pass-through entity doing business in the state. Nineteen states indicated that they would impose income tax on the gain recognized by the disposition of a nonresident individual's limited interest in a pass-through entity doing business in the state.
- Thirty states indicated that nonresident owners/members/partners subject to withholding or composite returns must file a return to receive a refund of amounts overwithheld.

Sharing Economy

- A new category was added to this year's survey addressing sales tax collection obligations related to the sharing economy. Only eight states indicated that they require companies like Uber to collect sales tax. Several states indicated that this was a nontaxable transportation service.

- In response to questions related to short-term accommodations facilitated by third-party sites like Airbnb, 25 states indicated the property's owner is responsible for collecting the sales tax. Fifteen states said that the third party was responsible for sales tax collection. Several states, including Colorado, Iowa and North Carolina, noted that the owner and third party are jointly liable for the collection of sales tax.

Sales Tax Nexus

- This year, we asked states whether entering the state solely for purposes of conducting disaster relief operations would create nexus. Nineteen states indicated that this activity would create nexus, while 13 states said that it would not.

- Only five states indicated that making remote sales of digital content that is downloaded by residents in the state would create nexus. A smaller number (three states) indicated that making remote sales of digital content that is accessed but not downloaded by residents in the state would create nexus.

Sales Tax Refunds and *Qui Tam* Cases

- Thirty-one states indicated they require vendors that obtain a sales tax refund to refund the tax to their purchasers. Washington stated that “[i]n order for a vendor to obtain a refund from the state, they must first show that they have refunded the sales tax to their customer.” New York, North Carolina and Nebraska appear to share this sentiment, indicating in their comments that they require the vendor to issue a credit, or refund, to the purchasers before requesting a refund from the state.

- Maine, Nevada and Rhode Island indicated that they have a false claims act under which a private party, acting as relator on behalf of the state, may bring a lawsuit against a taxpayer for underpaying tax.

- Only six states indicated that they have a consumer protection law under which purchasers may bring class action lawsuits against vendors for over-collected sales or use tax.

SURVEY SAMPLE: We sent a questionnaire to senior state tax officials in every state, the District of Columbia and New York City. This year, every jurisdiction except Ohio participated in the survey; however, some states declined to answer certain questions. The states were asked to provide their positions as of Jan. 1, 2017. Full text of the questionnaire appears at the end of the survey.

Introduction

2017 SURVEY OF STATE TAX DEPARTMENTS States Specify Nexus Policies, Clarify Sourcing Issues, Address Other Ambiguities

BLOOMBERG BNA SURVEY

For the 17th consecutive year, Bloomberg BNA has sought to clarify each state's position on nexus by sending questionnaires to senior state tax department officials in the District of Columbia, New York City and the 46 states that impose a corporate income tax. Bloomberg BNA also sent questionnaires regarding sales and use tax nexus to the 45 jurisdiction that impose a sales and use tax. In addition to nexus, the questionnaire asked officials about their state's tax treatment of pass-through entities and intangible holding companies, methods of sourcing income, sales tax refund actions, requirements for reporting federal changes and sales tax nexus and enforcement collection policies. The states were also queried about their throwback/throwout rules, combined reporting regimes and conformity to the Multistate Tax Compact.

Bloomberg BNA's annual survey offers insights for practitioners who must gauge whether a corporation's activities within a state could result in a tax assessment. Since guidance in the form of case law or statutes setting forth the types of activities that trigger nexus and taxability is lacking in many states, this survey fills in essential details.

However, because nexus determinations are fact-specific and subject to interpretation, the states' answers should not be relied upon as definitive policy statements. Even when a state indicates that the performance of a particular activity, by itself, would not trigger nexus, it is not always clear whether nexus might arise if any additional activity was performed in the state.

For the income tax portion of the survey, every state that imposes an income tax, plus the District of Columbia, participated this year, with the exception of New York and Ohio. For the portion of the survey addressing sales and use tax nexus, almost every state that imposes a sales tax, plus the District of Columbia, participated. New York City, Ohio and Oklahoma did not participate in the sales tax portion of the survey this year.

Full text of the questionnaire used in the 2017 Bloomberg BNA survey appears immediately after the end of the charts showing the states' responses.

NEW ADDITIONS

New portions of the survey this year cover topics such as adoption of the Multistate Tax Commission Statements on federal Pub. L. No. 86-272 and sales tax collection obligations related to the sharing economy. Also for the first time, states were asked whether they send a sales tax nexus questionnaire to corporations they believe might be doing business in their state.

There were significant additions to the pass-through entity portion of the survey with the inclusion of new questions regarding the disposition of pass-through entity interests and the expansion of questions related to classification of income, apportionment, composite returns and withholding.

The survey was also expanded in its coverage of nexus-creating activities and the tax treatment of non-U.S. entities.

INTRODUCTION

The state tax arena is fraught with variation, complexity, confusion and ambiguity. The Bloomberg BNA survey provides a comprehensive comparison of each state's policies in areas that can be troublesome for multistate taxpayers. Unfortunately, as the survey shows, many states' policies in these areas are still being developed. To add madness to the mayhem, the states lack uniformity in the interpretation and application of overarching principles in state taxation. It remains unclear, however, whether the creation of uniform rules would be the best solution.

Bloomberg BNA would like to thank the state tax officials who devoted their time and attention to responding to our questionnaire.

The survey highlights the complexity posed by an area in which there are many players and many rules, some of which remain the same while others are ever changing, according to Harley Duncan, a state and local tax managing director in KPMG's Washington National Tax Practice.

"It seems to me that over time we have seen a growing consistency across states in what they consider to be nexus and nexus-creating activities," he told Bloomberg BNA in an April 14 e-mail. "There is still a fair amount of inconsistency in sourcing certain types of transactions, particularly on the corporate income tax side, but also with respect to certain sales tax transactions (e.g., remotely accessed software), which can create challenges for taxpayers," he added.

Wide Variety in State Tax Policies

"If you look at our subnational political system, each state is represented by policymakers who live among voters that they represent and the economies of each state are different. The workforce of each state is different. The educational pool in each state is different. There are a lot of reasons why the states are the laboratories of democracy and that leads them to create unique tax policies," Stephen Kranz, a partner at McDermott Will & Emery in Washington, D.C., told Bloomberg BNA on April 12, when asked why there was such variety in state tax policy.

Duncan also indicated that variety stems from the nature of a multistate system. "This is a natural outcome of 50 state legislatures, thousands of individual state legislators and hundreds of individual tax administrators designing laws and policies, as well as applying law and principles to facts," he explained.

This disparity may also be economically motivated, with states seeking to entice certain taxpayers to invest in their state. The variety in policies nationwide may be driven by "what makes sense economically for the economy in that state or what type of economy or what type of business they would like to attract," Marilyn A. Wethekam, a partner at Horwood Marcus & Berk Chartered in Chicago, Illinois, told Bloomberg BNA on April 10.

No matter the reason behind this variation, taxpayers must be aware of the challenges that it presents. "For multistate taxpayers, it's very challenging because not only do you have to keep abreast of what's happening in all 50 states, you have to make sure you stay current with that," Fred Nicely, a senior tax counsel for the Council On State Taxation (COST), told Bloomberg BNA on April 11.

"The challenges for multistate taxpayers are staying abreast of changes, divining what position a state may take with respect to a particular transaction and dealing with differences across states that put the taxpayer in the middle of a whipsaw situation," Duncan pointed out.

Other practitioners spoke of the administrative and compliance issues raised by the differing rules. "Taxpayers often struggle to keep pace with these ever-changing rules to ensure that they are compliant with all filing responsibilities," Priya D. Nair, a state and local tax manager at Grant Thornton's National Tax Practice in Washington, D.C., told Bloomberg BNA in an April 13 e-mail.

This variation "is definitely the taxpayer's friend at times," Wethekam said, noting that "[y]ou have the ability to structure your businesses, or the manner in which you do certain types of business, based on where you're located. And, if that's different than the state next door, that helps," she added.

However, Wethekam also recognized the compliance issues raised by the variation, citing preparing returns, gathering information to support return positions and the inability to use multiple approaches with some financial reporting software as examples.

"It can be unduly burdensome at times," she said.

The difficulties raised by the multitude of state tax policies across the nation are wide-reaching, affecting more than just multistate taxpayers and practitioners. "Obviously, it makes it more difficult for businesses to operate in interstate commerce, which necessarily means it hurts the American economy, which obviously hurts the American people," Art Rosen, a partner at McDermott Will & Emery, told Bloomberg BNA on April 7.

A Changing Landscape

"We always think that eventually state and local tax issues are going to get easier, but we can see from the extensive survey results from the states that things are just getting more complicated," Nicely said.

Things will only get more complicated in the coming years, as states face a lack of revenue and the possibility of federal tax reform requiring them to make lasting changes to their tax regimes.

"You've got two things that are working hand in hand against the status quo at the state level," Brian Kirkell, a principal with RSM US LLP's Washington National Tax Office told Bloomberg BNA on April 12, referring to the budget deficits affecting many states and the impending likelihood of federal change.

"Nexus issues are one of the great conundrums of state taxation and that's what makes it interesting," Kirkell also said. This conundrum does not seem to have an end in sight, as states continue to actively challenge the physical presence nexus requirement for sales and use taxes handed down in *Quill Corp. v. North Dakota*, 510 U.S. 992 (1993).

A number of states have been "willing to blatantly defy *Quill* by adopting economic nexus for sales tax purposes," Sylvia Dion, founder and managing partner at PrietoDion Consulting Partners LLC in Westford, Massachusetts, told Bloomberg BNA on April 13. "As the number of states adopting economic nexus for sales tax continues to grow and the likelihood that a challenge would be considered by the U.S. Supreme Court, we might very well see *Quill* overturned," she continued.

Even as the future of state tax is unknown, the hope for clarity remains. "Ultimately, the goal in state taxation is transparency, uniformity, and fairness—all things that make it easier for taxpayers to comply," Kirkell noted.

QUALIFICATIONS

Some states qualified their responses as follows:

Alabama

For sales tax purposes, Alabama said that it has not established definitive thresholds for the frequency of contact that would create sufficient nexus to require the out-of-state seller to collect tax. “Because the Department approaches the question of nexus on a case by case basis, the survey questions are difficult to answer; and, in fact, the Department may prefer not to respond definitively to some of them,” it said. Alabama also noted that its responses are to the question of whether the activity creates nexus and not whether the transaction is taxable.

The state also provided the following guidance for persons, firms and corporations making retail sales of tangible personal property into the state, which applies to all transactions occurring on or after January 1, 2016: Sales and Use Tax Rule Number 810-6-2-.90.03, entitled Requirements for Certain Out-of-State Sellers Making Significant Sales into Alabama, requires out-of-state sellers with a substantial economic presence in Alabama to collect and remit Alabama tax on its sales into the state, regardless of whether it has an Alabama physical presence. The rule imposes a collection obligation on out-of-state sellers who engage in one or more activities subjecting out-of-state sellers to the state’s seller use tax levy, and who had \$250,000 or more in retail sales sold into Alabama in the previous year. Out-of-state sellers may satisfy the rule’s requirements by collecting, reporting and remitting tax on sales made into Alabama pursuant to the provisions of Article 2, Chapter 23 of Title 40, Code of Alabama 1975, or by participating in the Simplified Seller Use Tax Remittance Program.

California

California noted that answers to questions addressing highly factual areas, specifically relating to nexus, are necessarily general in nature and may change based upon the specific fact pattern presented and the constantly changing nature of the law regarding nexus.

Where appropriate, California said, it provided an explanation in a footnote, instead of a “yes” or “no” response. In addition, California stated that it made no attempt to address the imposition of any fee or license, filing requirements, distinctions between nexus and doing business, withholding responsibilities, or the consequences of unity and foreign commerce.

Florida

Florida said that nexus is a very complicated issue. “Each taxpayer’s facts and circumstances are unique, and must be reviewed specifically and in detail before any substantive determination regarding its nexus to Florida may be made,” the state added.

Florida’s 2016 responses to the sales and use tax portion of the survey were used for the 2017 survey.

Georgia

Georgia said that the information is provided in response to Bloomberg BNA’s specific inquiry and that the views expressed are the unofficial views of the writer only.

Hawaii

Hawaii said that its responses are informal opinions for general discussion purposes, subject to change without notice, and have no binding effect on the Department of Taxation. See Tax Information Release No. 2009-01 for more information.

Indiana

Indiana said the conclusions expressed in the survey response are those of the writer and therefore not binding on the Department of Revenue. The advice given in the survey response is based on the facts as presented and understood.

Iowa

Iowa advised that its survey response is an informal opinion and only applicable to the factual situation referenced and the statutes in existence at the time of issuance. The Department of Revenue could take a contrary position in the future, the state added. “Any oral or written opinion by Department personnel not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department,” Iowa said.

Massachusetts

Massachusetts said that its responses to the questionnaire constituted an “information letter” within the meaning of the Letter Ruling Regulation, 830 Mass. Code Regs. §62C.3.2. The responses, the state said, are intended to provide general information such as the potential applicability of the Massachusetts Department of Revenue’s public written statements or well-established principles of tax law, but are not intended to provide authoritative guidance on

the application of the tax laws to a specific set of facts. The responses are not a “ruling” or “letter ruling” that is legally binding on the department, the state said.

Michigan

With respect to the income tax portion of the survey, Michigan noted that all answers provided are for the Corporate Income Tax (CIT). The CIT took effect January 1, 2012, and replaces the Michigan Business Tax (MBT) for most taxpayers. However, businesses that have been approved to receive, have received, or have been assigned certain certificated credits may elect to file a return and pay the tax imposed by the MBT in lieu of filing under the CIT until the certificated credits are exhausted or extinguished. For information on the MBT, see prior versions of this survey, the state added.

“The CIT is comprised of three components: a corporate income tax, a gross direct premiums tax, and a franchise tax. The gross direct premiums tax applies only to insurance companies, and the franchise tax applies only to financial institutions. The corporate income tax is levied upon taxpayers with Michigan business activity unless prohibited by PL 86-272. A person whose activities are limited to those protected by PL 86-272 is not subject to the corporate income tax,” Michigan said.

New Mexico

New Mexico responses are an informal analysis of the facts presented in the survey, the state said. New Mexico also advised that their response does not constitute a ruling issued pursuant to NMSA 1978, Section 9-11-6.2, and does not stop the department from taking a contrary position in the future.

New York

New York did not participate in the income tax portion of the 2017 survey. However, the state noted that in 2014 it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years, which took effect Jan. 1, 2015.

“As should be expected with a change of this magnitude, there are numerous issues that will require guidance beyond the statutory language,” the state said. The Department has created a dedicated web page for corporate tax reform information (http://www.tax.ny.gov/bus/ct/corp_tax_reform.htm), containing a section for FAQs and all other guidance materials published to date, it added.

New York also said its most thorough guidance will take the form of regulations. The Department has posted several draft regulations on the reform Website, which also provides a link for readers to submit comments. New York will be issuing draft regs on numerous additional topics throughout the year. “Once we have completed the drafts and considered the comments, we will enter the formal regulation process. Given the length of this process, and the fact that we are still soliciting comments, it would be premature for us to respond to [the] survey at this time,” New York said.

“As should be expected with a change of this magnitude, there are numerous issues that will require guidance beyond the statutory language,” the city said. The Department has created a dedicated Web page for corporate tax reform information (<http://www1.nyc.gov/site/finance/taxes/corporate-tax-reform.page>) containing a section for FAQs and all other guidance materials published to date, it added.

New York City also said there will be guidance in the form of Rules, but it does not yet have an estimated time for their release. “Given the length of this process and the complexity and numerous issues involved, it would be premature for us to respond to [the] survey at this time,” New York City said.

South Carolina

South Carolina did not provide “yes” or “no” responses to the 2017 survey. Instead, the state referred us to South Carolina Department of Revenue Ruling No. 16-11 (2016) and requested that their responses to the questions posed in the ruling be used as their responses for 2017.

Texas

Texas noted that the Texas franchise tax is the state’s major business tax and is imposed on each taxable entity that is chartered in Texas or that does business in the state. “Taxable entity” includes a corporation, limited liability company, bank, savings and loan association, partnership (general, limited and limited liability), business trusts, professional associations, business associations, joint ventures and other legal entities that are organized in Texas or that do business in Texas. However, a general partnership where direct ownership is composed entirely of natural persons is not a taxable entity. The state explained that it does not impose a corporate income tax, but does impose a franchise tax. The franchise tax is based on a taxable entity’s margin. Margin equals the least of four calculations: total revenue minus cost of goods sold, total revenue minus compensation, total revenue times 70 percent or total revenue minus \$1 million. A taxable entity with total revenue of \$20 million or less may elect to calculate its franchise tax due by multiplying total revenue times the apportionment factor times 0.331 percent. Texas said that because the survey specifically asks about the state’s “income-based” tax on corporations, its responses are directed at the calculation of “margin” for franchise tax reporting purposes on taxable entities.

Washington

In answering the questions, Washington only considered whether or not the activity would create substantial nexus for collection of retail sales tax. It did not consider whether the activity would create substantial nexus for other taxes (e.g. B&O tax) in Washington.

Wyoming

“Please be aware the state of Wyoming does not levy a personal or corporate income tax. Wyoming does not impose a tax on intangible assets such as bank accounts, stocks, or bonds. In addition does not assess any tax on retirement income earned and received from another state,” Wyoming said, before adding that there is no legislative plan to implement any of these types of taxes. The state also said its responses should not be extended to income tax nexus.

Additionally, Wyoming noted that seemingly minor alterations of a fact pattern can affect its determinations. For this reason, Wyoming’s survey responses do not constitute a revenue tax ruling or binding letter ruling of the Department of Revenue per W.S. 39-111-102(a)(i)(D).

State Nexus Policies

Varying Nexus Policies Create Uncertainty As States Enact Factor Presence Nexus Standards

The nexus policy portion of the survey asks questions regarding each jurisdiction's nexus standard and the mechanisms used by the states to enforce them. There is a need for corporations and their tax advisors to determine nexus in a variety of contexts. In some cases, a corporation that started off doing business in only one state grows quickly and fails to recognize it may have triggered nexus in a number of states.

In other cases, a company may review the nexus positions it took in various states after it changes tax managers. A company might change an earlier position after deciding that the former tax manager either incorrectly concluded that the company was not subject to tax or pursued an overly aggressive nexus policy.

Theories Underlying Policies

States typically follow one of three general approaches to make income tax nexus determinations. Those states that adhere to a physical presence standard base nexus on the presence of employees or property within their borders. States that adhere to an economic nexus standard believe nexus can be triggered merely by making sales into the state. States that adhere to a factor presence nexus standard base nexus on taxpayers exceeding a specified threshold of physical or economic presence in the state.

For state tax purposes, "nexus" generally means the threshold of contact that must exist between a taxpayer and a state before the state has jurisdiction to tax the taxpayer. The Due Process Clause of the U.S. Constitution requires that there be some minimum connection between a state and the person, property or transaction it seeks to tax. Similarly, the U.S. Commerce Clause, which governs the taxation of interstate commerce, requires that there be a "substantial nexus" between the taxed activity and the taxing state.

In addition to constitutional limitations, the states are further limited by Pub. L. No. 86-272. The law prohibits states from taxing the net income of businesses whose only activities in the taxing state consist of the "solicitation of orders" for the sale of tangible personal property, provided the orders are sent outside the state for acceptance and, if accepted, the goods are delivered from a point located outside the state. The Multistate Tax Commission has published guidance designed to help states interpret and apply Pub. L. No. 86-272 uniformly.

Physical Presence

A key constitutional question that remains undecided by the U.S. Supreme Court is whether the states must use the physical presence test established by the high court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) when making corporate income tax nexus determinations.

In *Quill*, the court declared that for a state tax to satisfy the requirements under the U.S. Constitution's Commerce Clause, the potential taxpayer must have a substantial connection with the state. The court found that, in the context of sales and use taxes, substantial nexus means that the potential taxpayer has a physical presence in the state, and that such physical presence must be more than de minimis.

While *Quill* established a "bright-line" physical presence standard for sales and use taxes, the opinion leaves open the question of whether the same requirements for nexus apply to corporate income taxes. In absence of clear guidance from the high court, the state appellate courts began providing their own answers from the time that the *Quill* case was decided. Many state appellate courts have found that an out-of-state corporation need not be physically present within their jurisdictions to trigger nexus.

Economic Presence

The first to wrestle with the issue of economic nexus was the South Carolina Supreme Court with its decision in *Geoffrey Inc. v. South Carolina Tax Dept.*, 437 S.E.2d 13 (S.C. 1993), cert. denied, 510 U.S. 992 (1993). In *Geoffrey*,

For more information, see:

Corporate Income Tax Navigator at 2.1.

Portfolio 1400-2nd: Federal Constitutional Limitations on State Taxation

Portfolio 1410-2nd: Limitations on States' Jurisdiction to Impose Net Income Based Taxes

Portfolio 1430-2nd: Jurisdictional Limitations: Attributional Nexus

the state supreme court, ostensibly utilizing the U.S. Supreme Court’s analytical framework in *Quill*, held that an out-of-state corporation, Geoffrey, was subject to the state’s income tax (and license fees) even though the company had no physical presence in the state.

After the U.S. Supreme Court denied *certiorari* to the *Geoffrey* taxpayer, several other state appellate courts have found that the physical presence standard established in *Quill* is limited to sales and use tax determinations. As a result, until the U.S. Supreme Court rules otherwise, there is no uniform bright-line standard for determining whether substantial nexus exists for corporate income taxes.

Without clear guidance in this area, states and corporations often disagree on the level of economic activity within a given jurisdiction that constitutes substantial nexus.

Factor Presence Nexus

The Multistate Tax Commission’s model statute, *Factor Presence Nexus Standard for Business Activity Taxes*, uses both economic and physical presence to determine nexus. The model statute quantifies the level of activity that constitutes economic nexus. Nexus is triggered for each type of contact only if the following thresholds are exceeded during the tax period:

- \$50,000 of property,
- \$50,000 of payroll,
- \$500,000 of sales, or
- 25 percent of total property, total payroll or total sales.

“Factor presence provides the benefit of a clear standard for determining when nexus with a state is created. Notably, however, these clear standards may create constitutional concerns for jurisdictions adopting them because a resulting nexus determination would depend solely on these factors rather than considering a taxpayer’s complete nexus profile” Priya Nair, a state and local tax manager at Grant Thornton’s National Tax Office in Washington, D.C., told Bloomberg BNA in an e-mail.

Bloomberg BNA Survey Addresses Varying Corporate Income Tax Nexus Policies

Bloomberg BNA asked each state if its income tax nexus policies are based on a physical presence standard, an economic presence standard or a factor presence standard. Ten states indicated that their nexus policy is based on physical presence, 33 states indicated that their nexus policy is based on economic presence and 13 states indicated that their nexus policy is based on factor presence. For some states that indicated they have a factor presence nexus standard, “it may be nothing more than a codification of what was an internal litmus test of when you went over the de minimis line,” Marilyn Wethekam, a partner at Horwood Marcus & Berk Chartered in Chicago, Illinois, told Bloomberg BNA.

State Nexus Standards

Nexus policy based on physical presence



Nexus policy based on economic presence



Nexus policy based on factor presence

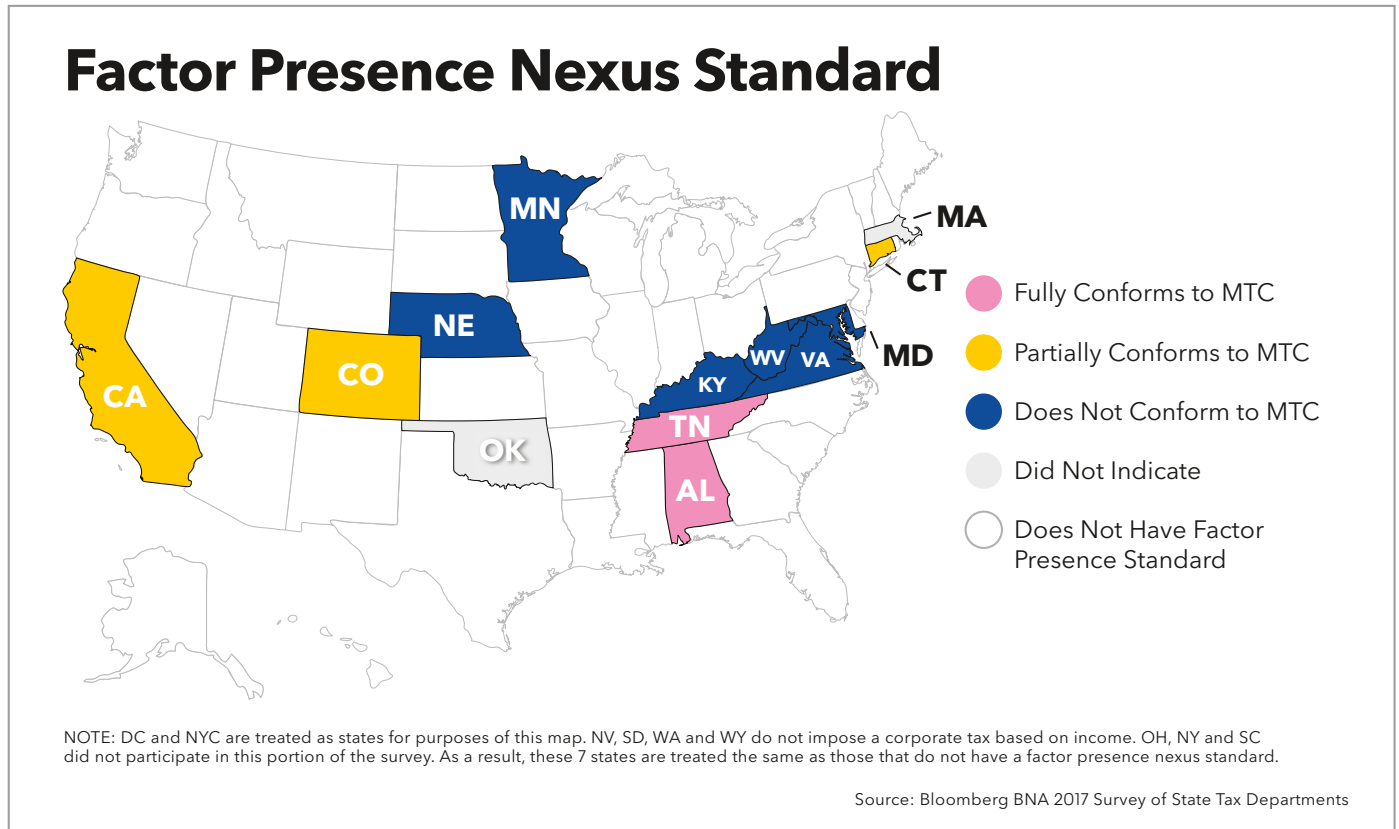


NOTE: Some states provided more than one “yes” response. DC and NYC are treated as states for purposes of this chart. NV, SD, WA and WY do not impose a corporate tax based on income. OH, NY and SC did not participate in this portion of the survey. As a result, these 7 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

We also asked states whether they conformed to the Multistate Tax Commission's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*. Despite the model statute's purported benefits, adoption by states has been slow. According to this year's survey responses, only five states indicated that their factor presence standard conforms (Alabama and Tennessee) or partially conforms (California, Colorado and Connecticut) to the model statute. Six states said that their factor presence nexus standard does not conform to the model statute.

Although very few states have adopted all three factor thresholds, "the sales threshold portion appears to be the most popular," Richard Cram, director of the Multistate Tax Commission's National Nexus Program, told Bloomberg BNA on April 10, adding that he expects more states to move in that direction.



Other practitioners appear optimistic regarding the future of factor presence nexus as well. Fred Nicely, a senior tax counsel for COST, said in an interview with Bloomberg BNA that he expects the numbers to continue to grow, "especially in light of the *Ohio Crutchfield*, *Newegg*, and *Mason Companies* cases."

This year, we added a series of questions regarding the adoption of the Multistate Tax Commission (MTC) Statements on Pub. L. No. 86-272. Eleven states indicated that they did not conform to any of the MTC's published guidance on Pub. L. No. 86-272. Of the remaining states, 10 indicated that they were a signatory to the Phase I statement (with or without exceptions) and 13 indicated that they were a signatory to the Phase II statement (with or without exceptions).

In addition to these questions on nexus standards and adoption of the MTC Statements on Pub. L. No. 86-272, we also asked questions about nexus enforcement and trailing nexus. The states' responses to these questions appear in the charts on the following pages.

State Income Tax Nexus Policies

State ¹	Applies <i>Quill</i> to income tax nexus ²	If no, has state ever applied <i>Quill</i> to income tax? ³	If yes, date state ceased applying <i>Quill</i> ⁴	State nexus policy based on physical presence ⁵	State nexus policy based on physical presence b/c of agency relationship ⁶	State nexus policy based on economic presence ⁷	State nexus policy based on factor presence ⁸
Alabama	No	No	Not Applicable	No	No	No	Yes⁹
Alaska	No	No	Not Applicable	No	Yes	Yes	Not Applicable
Arizona	No	No	Not Applicable	No	No	No	No
Arkansas	No	No	Not Applicable	No	Yes	Yes	No
California	Depends	Not Applicable	Not Applicable	No Response ¹⁰	Yes	Depends ¹¹	Yes¹²
Colorado	No ¹³	No	Not Applicable	No	Yes	Yes	Yes
Connecticut	No ¹⁴	No Response ¹⁵	No Response	No ¹⁶	Depends ¹⁷	Yes ¹⁸	Yes¹⁹
Delaware	Yes	Not Applicable	Not Applicable	Yes	Yes	No	No
District of Columbia	No ²⁰	Yes	Not Applicable	No ²¹	Yes	Yes	No
Florida	No	No	Not Applicable	No	Yes	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state applies *Quill* (*i.e.*, requires that a corporation have a physical presence in the state in order to create nexus) in making income tax nexus determinations.

³ If your state does not apply *Quill*, please indicate if your state had ever adhered to *Quill* in making income tax nexus determinations.

⁴ If your state has applied *Quill* in the past, please indicate when your state ceased adhering to *Quill* in making income tax nexus determinations.

⁵ Your state's income tax nexus policy is based on physical presence (*i.e.*, requires that a corporation have a physical presence in the state in order to create nexus).

⁶ Your state's income tax nexus policy is based on physical presence as a result of an agency relationship (*i.e.* nexus may result from an out-of-state corporation's relationship with an in-state entity that has the right to bind a corporation into a contract).

⁷ Your state's income tax nexus policy is based on economic presence (*i.e.*, nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders).

⁸ **Your state's income tax nexus policy is based on physical presence as a result of an agency relationship (*i.e.* nexus may be triggered by conducting a certain amount of economic activity within the state, as measured by an annual dollar threshold or activity threshold, even if a corporation lacks a physical presence within the state's borders).**

⁹ **AL: See AL Code Sec. 40-18-31.2.**

¹⁰ CA: Physical presence creates nexus.

¹¹ CA: Economic presence may create nexus depending on facts and circumstances. *See also* R&TC section 23101(b).

¹² **CA: See R&TC section 23101(b).**

¹³ CO: Notwithstanding reference to *Quill* in Taxpayer Service Division FYI INCOME 58.

¹⁴ CT: *See* Conn. Gen. Stat. § 12-216a.

¹⁵ CT: DRS has no published position.

¹⁶ CT: *See* Conn. Gen. Stat. § 12-216a; IP 2010(29.1), Q&A on Economic Nexus. **In regard to economic nexus, Connecticut established a bright-line test, which requires more than \$500,000 of in-state sales.**

¹⁷ CT: *Id.*

¹⁸ CT: *Id.*

¹⁹ **CT: *Id.***

²⁰ DC: For tax years beginning after December 31, 2011.

²¹ DC: The requirement of having office, warehouse or other place of business in the District was repealed.

State ¹	Applies <i>Quill</i> to income tax nexus ²	If no, has state ever applied <i>Quill</i> to income tax? ³	If yes, date state ceased applying <i>Quill</i> ⁴	State nexus policy based on physical presence ⁵	State nexus policy based on physical presence b/c of agency relationship ⁶	State nexus policy based on economic presence ⁷	State nexus policy based on factor presence ⁸
Georgia ²²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes ²³	Not Applicable	Not Applicable	Yes	Yes	Yes	No
Idaho	No	No	Not Applicable	No	Yes ²⁴	Yes ²⁵	Depends²⁶
Illinois	No	No	Not Applicable	No	No	Yes	No
Indiana	No	No	Not Applicable	No	No	Yes	No
Iowa	No ²⁷	Yes	Tax years beginning on or after Jan. 1, 1995.	No ²⁸	Yes ²⁹	Yes	No
Kansas	No	No	Not Applicable	No Response ³⁰	No Response ³¹	No Response ³²	No Response³³
Kentucky	No	Yes ³⁴	2005	No ³⁵	Yes ³⁶	Yes	Yes
Louisiana	No ³⁷	No	Not Applicable	No ³⁸	No	No ³⁹	No
Maine	No	No	Not Applicable	No	Yes	Yes	No
Maryland	No	No	Not Applicable	No	Yes	Yes	Yes

²² GA: Nexus is a factual determination; Georgia applies all applicable legal standards in making a determination.

²³ HI: For income tax purposes, Hawaii recognizes and applies Public Law 86-272. See Tax Information Release No. 96-1, "Computer Company's Provision of In-State Repair Services Creates Nexus," which states that Hawaii will follow the Multistate Tax Commission Nexus Program Bulletin No. 95-1.

²⁴ ID: See Idaho Code section 63-3023, Transacting business. **Idaho does not have a dollar threshold.**

²⁵ ID: *Id.*

²⁶ ID: *Id.*

²⁷ IA: Iowa Code § 422.33(1) was amended starting in 1995 to eliminate the physical presence requirement. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010. KFC's petition for the U.S. Supreme Court to hear their appeal was denied on October 3, 2011. This was also upheld in an Administrative Law Judge decision involving Jack Daniels Properties and Southern Comfort Properties issued on July 28, 2011.

²⁸ IA: Iowa Code § 422.33(1) sets forth economic presence standard. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010.

²⁹ IA: Iowa Code § 422.33(1) sets forth economic presence standard. This position was upheld by the Iowa Supreme Court in a decision involving KFC Corporation that was issued on Dec. 30, 2010. The independent contractor/agent can maintain an office in Iowa and not create nexus for the corporation which they represent. However, any nonsolicitation activities by the independent contractor will create nexus for the corporation they represent. See rule 701-52.1(3)(w).

³⁰ KS: The business must be conducting sufficient business activity to have nexus. Public Law 86-272 does not extend to those business which sell services, real estate, or intangibles or are incorporated in Kansas. If a business is incorporated in Kansas and is located outside of Kansas making sales into Kansas, it has nexus.

³¹ KS: *Id.*

³² KS: *Id.*

³³ KS: *Id.*

³⁴ KY: Kentucky law, for tax years beginning prior to 1/1/05, required that a corporate taxpayer have either property or payroll in the state in order to have nexus.

³⁵ KY: The Commonwealth adopted the "doing business standard" as provided by KRS 141.010(25) and KRS 141.040(1), effective Jan. 1, 2005.

³⁶ KY: See 103 KAR 16:240, Section 4(4)(b).

³⁷ LA: Louisiana does not require physical presence for nexus determinations, but physical presence in Louisiana will certainly give rise to nexus. For income tax, we can use other determinations for nexus when there is no physical presence in the state.

³⁸ LA: To determine if your corporation is liable for corporation income and franchise tax, Form R-4310, the Questionnaire to Assist in Determining Liability for Corporate Income Tax or Franchise Tax, is available on our website.

³⁹ LA: *Id.*

State ¹	Applies <i>Quill</i> to income tax nexus ²	If no, has state ever applied <i>Quill</i> to income tax? ³	If yes, date state ceased applying <i>Quill</i> ⁴	State nexus policy based on physical presence ⁵	State nexus policy based on physical presence b/c of agency relationship ⁶	State nexus policy based on economic presence ⁷	State nexus policy based on factor presence ⁸
Massachusetts	Yes	Not Applicable	Not Applicable	No ⁴⁰	No ⁴¹	Yes ⁴²	Yes⁴³
Michigan	No ⁴⁴	Yes	12/31/2007 ⁴⁵	Yes ⁴⁶	Yes ⁴⁷	Yes ⁴⁸	No⁴⁹
Minnesota ⁵⁰	No	No	Not Applicable	No	Yes	Yes	Yes
Mississippi	No ⁵¹	No	Not Applicable	No	Yes	Yes	No
Missouri	No	No	Not Applicable	No	Yes	Yes	No⁵²
Montana	No	No	Not Applicable	No	Yes ⁵³	Yes	No
Nebraska	No	No	Not Applicable	Yes	Yes	Yes ⁵⁴	Yes⁵⁵
New Hampshire	No	No	Not Applicable	No	No	Yes	No
New Jersey	No	No	Not Applicable	No	Yes	Yes	No
New Mexico	No ⁵⁶	Yes ⁵⁷	1998 ⁵⁸	Yes	Yes	Yes	No
New York City	Yes⁵⁹	Not Applicable	Not Applicable	Yes	Yes	No	No⁶⁰

⁴⁰ MA: Financial institutions have been subject to an economic nexus standard since January 1, 1995.

⁴¹ MA: *Id.*

⁴² MA: *Id.*

⁴³ MA: *Id.*

⁴⁴ MI: Persons have nexus with Michigan and are subject to the CIT if “the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000 or more sourced to this state, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state.” See MCL 206.621(1).

⁴⁵ MI: With the enactment of the MBT.

⁴⁶ MI: A person may have nexus with Michigan if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in the state and has Michigan gross receipts of \$350,000 or more, or if the person has an ownership interest or a beneficial interest, held directly or indirectly, in a flow-through entity that has substantial nexus in Michigan. See MCL 206.621(1).

⁴⁷ MI: Physical presence is defined in MCL 206.621(2)(b) to include any activity conducted on behalf of the taxpayer by the taxpayer’s agent.

⁴⁸ MI: A person may have nexus with Michigan if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in the state and has Michigan gross receipts of \$350,000 or more, or if the person has an ownership interest or a beneficial interest, held directly or indirectly, in a flow-through entity that has substantial nexus in Michigan. See MCL 206.621(1).

⁴⁹ MI: *Id.*

⁵⁰ MN: Minn. Stat. sec. 290.015, subd. 1(b) provides, in part, that a person that conducts a trade or business is subject to taxes imposed by Minn. Stat. chapter 290 if the trade or business obtains or regularly solicits business from within the state, without regard to physical presence in this state. That statute was enacted prior to the *Quill* decision.

⁵¹ MS: A corporation that is registered to do business with the Mississippi Secretary of State is required to file and pay franchise tax.

⁵² MO: **There are no threshold amounts - any economic presence triggers nexus.**

⁵³ MT: Nexus is not based on physical presence, however, example given may result in nexus being established.

⁵⁴ NE: See Nebraska Revenue Ruling 24-08-01.

⁵⁵ NE: *Id.*

⁵⁶ NM: Applied *Quill* until around 1995-1998 when we adopted a representation and economic requirement for nexus.

⁵⁷ NM: *Id.*

⁵⁸ NM: *Id.*

⁵⁹ NYC: **Note that physical presence is no longer required in order to create income tax nexus at the state level, and that New York City’s unincorporated business tax statute does not specifically include a physical presence standard.**

⁶⁰ NYC: **Pursuant to Administrative Code § 11-653(c), credit card companies with one thousand or more customers having a mailing address in New York City are subject to the business corporation tax regardless of whether the credit card company has a physical location in the city.**

State ¹	Applies <i>Quill</i> to income tax nexus ²	If no, has state ever applied <i>Quill</i> to income tax? ³	If yes, date state ceased applying <i>Quill</i> ⁴	State nexus policy based on physical presence ⁵	State nexus policy based on physical presence b/c of agency relationship ⁶	State nexus policy based on economic presence ⁷	State nexus policy based on factor presence ⁸
North Carolina	No ⁶¹	No ⁶²	Not Applicable	No ⁶³	Yes ⁶⁴	Yes	No
North Dakota	No	No	Not Applicable	No	Yes ⁶⁵	Yes	No
Oklahoma	No	Yes	No Response	Yes	No Response	Yes	Yes
Oregon	No	No	Not Applicable	No	Yes	Yes	Not Applicable
Pennsylvania	Yes ⁶⁶	Not Applicable	Not Applicable	Yes ⁶⁷	Yes	Depends	No
Rhode Island	No	No	Not Applicable	Yes ⁶⁸	Yes ⁶⁹	No ⁷⁰	No⁷¹
Tennessee	No ⁷²	Yes ⁷³	2016 ⁷⁴	No⁷⁵	No⁷⁶	Yes ⁷⁷	Yes
Texas	Yes	Not Applicable	Not Applicable	Yes	Yes	No	No
Utah	No	No	Not Applicable	No	Yes	Yes	No
Vermont	No	No	Not Applicable	No	No	No	No
Virginia	No ⁷⁸	No ⁷⁹	Not Applicable	No	No	Yes ⁸⁰	Yes⁸¹
West Virginia	No	No	Not Applicable	No	Yes	Yes ⁸²	Yes⁸³
Wisconsin	No	No	Not Applicable	No ⁸⁴	Yes ⁸⁵	Yes ⁸⁶	No⁸⁷

⁶¹ NC: NC Statutes do not define “doing business.” Our administrative regulation, NCAC T17:5C.0102, does define “doing business.” It includes activities that would create nexus, but it is not all inclusive.

⁶² NC: *Id.*

⁶³ NC: *Id.*

⁶⁴ NC: *Id.*

⁶⁵ ND: Nexus is not based on physical presence, but the example given may result in nexus.

⁶⁶ PA: Physical presence may be through agents and representatives.

⁶⁷ PA: Physical presence may be through agents or representatives.

⁶⁸ RI: Under the implementation of combined reporting, a company who is part of a unitary business may have a filing requirement because one of the related companies has nexus.

⁶⁹ RI: *Id.*

⁷⁰ RI: Under the implementation of combined reporting, a company who is part of a unitary business may have a filing requirement because one of the related companies has nexus. **RI does not establish a specific threshold amount, though the determination of nexus may vary from case to case as far as what would be considered sufficient economic and factor presence.**

⁷¹ RI: *Id.*

⁷² TN: See 2015 Tenn. Pub. Acts Ch. 514, §6 (effective Jan. 1, 2016) passed April 22, 2015.

⁷³ TN: *Id.*

⁷⁴ TN: *Id.*

⁷⁵ TN: **Although physical presence creates nexus, Tennessee’s nexus policy also includes economic and factor presence.**

⁷⁶ TN: *Id.*

⁷⁷ TN: See 2015 Tenn. Pub. Acts Ch. 514, §6 (effective Jan. 1, 2016) passed April 22, 2015.

⁷⁸ VA: See P.D. 06-38.

⁷⁹ VA: *Id.*

⁸⁰ VA: See 23 VAC 10-120-90; P.D. 09-81.

⁸¹ VA: *Id.*

⁸² WV: See *Tax Comm’r of WV v. MBNA America Bank, N.A.*, 640 S.E.2d 226 (W.Va. 2006).

⁸³ WV: **WV Code 11-24-7b provides a de minimis standard of activity to establish nexus for financial organizations based on soliciting business with 20 or more persons in the State, of if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds \$100,000.**

⁸⁴ WI: Economic nexus is in Wisconsin’s definition of “doing business” in this state - sec. 71.22(1r), Wis. Stats. (2015-16).

⁸⁵ WI: *Id.*

⁸⁶ WI: *Id.*

⁸⁷ WI: *Id.*

Adherence to Factor Presence Nexus Standard

State ¹	Fully conforms to MTC model statute ²	Partially conforms ³	Conformity litigated ⁴	Does not conform ⁵	Threshold for specific industry groups ⁶
Alabama	Yes ⁷	No Response	No	No ⁸	No
Alaska	No	No	Not Applicable	Yes	No
Arizona	No	No	Not Applicable	Yes ⁹	No
Arkansas	No	No	No	Yes	No
California	No ¹⁰	Yes ¹¹	No ¹²	No ¹³	Yes ¹⁴
Colorado	No	Yes ¹⁵	No	No Response ¹⁶	No Response ¹⁷
Connecticut ¹⁸	No	Yes	No	No	No
Delaware	No	No	Not Applicable	Yes	No
District of Columbia	Not Applicable	Not Applicable	Not Applicable	Yes	No
Florida	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia	No	No	Not Applicable	Not Applicable	No
Hawaii	No	No	Not Applicable	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH, OK and SC did not participate in this portion of the survey.

² Your state's **factor presence nexus standard** generally conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

³ Your state's **factor presence nexus standard** partially conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*. Please describe how your state's law differs in the Comments section below.

⁴ If your state's **factor presence nexus standard** conforms or partially conforms to the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*, has your state's reliance on the MTC's model statute been tested in court? If so, please provide the relevant citations in the Comments section below.

⁵ Your state's **factor presence nexus standard** does not conform to any aspects of the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

⁶ Your state has adopted an annual dollar threshold or activity threshold applicable **only** to specific industry groups, which is not based on the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

⁷ AL: **See Sec. 40-19-31.2**. Effective for tax years beginning 2015.

⁸ AL: **Does apply**.

⁹ AZ: Arizona does not conform to any aspects of the MTC's model statute, *Factor Presence Nexus Standard for Business Activity Taxes*.

¹⁰ CA: California partially conforms to the MTC's model statute. See RTC §23101(b).

¹¹ CA: *Id.*

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CA: RTC §23104 provides that any corporation that is not incorporated under the laws of California and whose sole activity in the state is engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, for seven or fewer calendar days, or any portion thereof, during the taxable year and that does not derive more than ten thousand dollars (\$10,000) of gross income reportable to this state from those activities during that taxable year is not a corporation doing business in California.

¹⁵ CO: *See Reg 39-22-303.1*. Colorado reg applies only to business. Deletes MTC subsection D and substitutes reference to state law regarding combined returns. Deletes MTC subsection E re: throwback.

¹⁶ CO: *Id.*

¹⁷ CO: *Id.*

¹⁸ CT: *See IP 2010(29.1)*, Q&A on Economic Nexus. In regards to economic nexus, Connecticut established a bright-line test, which requires more than \$500,000 in sales. There is no bright-line test for property and payroll.

State ¹	Fully conforms to MTC model statute ²	Partially conforms ³	Conformity litigated ⁴	Does not conform ⁵	Threshold for specific industry groups ⁶
Idaho	No	No	Not Applicable	Yes	No
Illinois	No	No	Not Applicable	Yes	No
Indiana	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa	No	No	Not Applicable	Yes	No
Kansas	No	No Response ¹⁹	No	No Response	No
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	No	No	Not Applicable	Yes	No
Maryland	No	No	Not Applicable	Yes	No
Massachusetts	No	No	Not Applicable	No	No
Michigan	No	No	Not Applicable	Yes	No
Minnesota ²⁰	No	No	Not Applicable	Yes	Yes
Mississippi	No	No	Not Applicable	Yes	No
Missouri	No	No	No	Yes	No
Montana	Not Applicable	Not Applicable	Not Applicable	Yes	Not Applicable
Nebraska ²¹	No	No	Not Applicable	Yes	Yes ²²
New Hampshire	No	No	Not Applicable	No Response	No
New Jersey	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New York City	No	No	Not Applicable	Yes	No
North Carolina	No	No	Not Applicable	No	Yes ²³
North Dakota	No	No	Not Applicable	Yes	Yes ²⁴
Oklahoma	No	No	No Response	No Response	No
Oregon	No	No	Not Applicable	Yes	No
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No

¹⁹ KS: To the extent it complies with P.L. 86-272.

²⁰ MN: Nexus Presumptions in Minn. Stat. Section 290.015, Subd. 2 define activities which Minnesota nexus can be presumed.

²¹ NE: Nebraska follows the MTC Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272.

²² NE: See Revenue Ruling 24-08-1 Nexus - For-hire Trucking Companies.

²³ NC: A mortgage lender corporation that does not maintain a place of business in North Carolina is considered to be "doing business" in this state if it makes more than \$5,000,000 of loans secured by real property in this state and it uses employees, agents, or independent contractors for the purpose of soliciting or finalizing loans. (See Tax Directive CD-99-1.)

²⁴ ND: Trucking companies - travels 25,000 miles within the state, or more than 3% of all miles traveled are in the state, or makes more than 12 trips into the state.

State ¹	Fully conforms to MTC model statute ²	Partially conforms ³	Conformity litigated ⁴	Does not conform ⁵	Threshold for specific industry groups ⁶
Rhode Island	No	No	Not Applicable	Yes	No
Tennessee ²⁵	Yes	Not Applicable	No	No	No
Texas	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Utah	Not Applicable	Not Applicable	Not Applicable	Yes	Yes ²⁶
Vermont	No	No	Not Applicable	Yes ²⁷	No
Virginia	No	No	Not Applicable ²⁸	Yes	No
West Virginia	No	No	No	Yes	Yes ²⁹
Wisconsin	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

²⁵ TN: See Tenn. Code Ann. Section 67-4-2004(49)(A).

²⁶ UT: Utah Administrative Rule R865-6F-19 dealing with Trucking companies requires such a company to file a Utah corporation franchise tax return if: 1) It owned or rented any real or personal property in this state; 2) made any pickups or deliveries within this state; 3) traveled more than 25,000 mobile property miles in this state, provided that the total mobile property miles traveled within this state during the tax year exceeded three percent of the total mobile property miles traveled in all states; or 4) made more than 12 trips into this state.

²⁷ VT: Vermont does not conform to the thresholds established in the model statute.

²⁸ VA: Nexus requires at least one positive apportionment factor. Moreover, there is a de minimis standard, which is based on the nature, continuity, and regularity of the activities conducted in the state. See 23 VAC 10-120-90.

²⁹ WV: WV Code 11-24-7b provides a de minimis standard of activity to establish nexus for financial organizations based on soliciting business with 20 or more persons in the State, or if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds \$100,000.

Adoption of MTC Statements on Federal Pub. L. No. 86-272

State ¹	Signatory to Phase I Statement ²	Signatory to Phase I Statement, with additions or exceptions ³	Not a signatory to Phase I Statement, but has similar state law ⁴	Signatory to Phase II Statement ⁵	Signatory to Phase II Statement, with additions or exceptions ⁶	Not a signatory to Phase II Statement, but has similar state law ⁷	State law conforms to 2001 amendment ⁸	Does not conform ⁹
Alabama	No	No	No	No	No	No	Yes ¹⁰	No
Alaska	No	No	No	No	No	No	No	No Response ¹¹
Arizona	No	No	No	No	Yes ¹²	No	No	No
Arkansas	Not Applicable	Not Applicable	Not Applicable	Yes	No	Not Applicable	Not Applicable	Not Applicable
California	No	No	Not Applicable	No	Yes ¹³	Not Applicable	No	No
Colorado	Not Applicable	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	No	Not Applicable
Connecticut ¹⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida	Yes	Not Applicable	Not Applicable	No	No	No	No	Yes
Georgia	No	No	No	No	No	No	No	Yes
Hawaii	Yes	No	No	Yes ¹⁵	No	No	Yes ¹⁶	No
Idaho ¹⁷	No	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	No	Not Applicable
Illinois	No	No	No	No	No	No	No	Yes

¹ The questions in this chart are all appearing for the first time in 2017. As a result, none of the responses are in bold.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state is a signatory to the Phase I Statement without any additions or exceptions.

³ Your state is a signatory to the Phase I Statement and created your own additions or exceptions to the statement.

⁴ Your state is not a signatory to the Phase I Statement, but has laws that adhere to the statement's list of immune and non-immune activities.

⁵ Your state is a signatory to the Phase II Statement without any additions or exceptions.

⁶ Your state is a signatory to the Phase II Statement and created your own additions or exceptions to the statement.

⁷ Your state is not a signatory to the Phase II Statement, but has laws that adhere to the statement's list of immune and non-immune activities.

⁸ Your state conformed its laws to the MTC's 2001 amendment to its guidelines on Pub. L. No. 86-272.

⁹ Your state does not conform to the Phase I Statement, Phase II Statement or 2001 Amendment.

¹⁰ AL: See AL Rule 810-27-1-.19.

¹¹ AK: Alaska has no position at this time.

¹² AZ: Please see Corporate Tax Ruling, CTR 99-5 for more information.

¹³ CA: Due to its *Finnigan* decision, California did not adopt VII E., "Application of the Joyce Rule." California did not adopt VII A., "Application of Statement to Foreign Commerce," and substituted for this paragraph the following: "A. Sales in Foreign Commerce—Public Law 86-272 does not apply to sales made in foreign commerce. California will apply the standards required by the United States Constitution to sales made in foreign commerce for the purpose of determining whether such activity is immune from taxation in the foreign jurisdiction." For taxable years beginning on or after January 1, 2011, California reverts back to the *Finnigan* rule.

¹⁴ CT: Connecticut is not a signatory to the Phase I Statement or the Phase II Statement. See Conn. Agencies Regs. §12-214-1 for information on nexus creating activities.

¹⁵ HI: See TIR 95-3.

¹⁶ HI: *Id.*

¹⁷ ID: Idaho signed phase II. The Commission has not ruled on the specifics of these statements.

State ¹	Signatory to Phase I Statement ²	Signatory to Phase I Statement, with additions or exceptions ³	Not a signatory to Phase I Statement, but has similar state law ⁴	Signatory to Phase II Statement ⁵	Signatory to Phase II Statement, with additions or exceptions ⁶	Not a signatory to Phase II Statement, but has similar state law ⁷	State law conforms to 2001 amendment ⁸	Does not conform ⁹
Indiana	No	No	No	No	No	No	No	Yes
Iowa ¹⁸	No	No	No	No	No	No	No	Yes
Kansas	No	No	No	No	No	No	No	Yes
Kentucky	No	No	Yes	No	No	No Response ¹⁹	No	No Response
Louisiana	No	No	No	Yes	No	No	No	No
Maine	No	No	Yes	No	No	Yes	No	Yes
Maryland ²⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	No	No	No	No	No	No	No
Michigan	No	No	No Response ²¹	No	No	No Response ²²	No Response ²³	No
Minnesota	No	No	No	No	No	No	No	Yes
Mississippi	No	No	No	No	No	No	No	No
Missouri ²⁴	No	No	No	No	No	No	No	No
Montana	Yes	No	No	Yes	No	No	Yes	No
Nebraska	No	No	No	No	No	No	No	No
New Hampshire	No	No	No ²⁵	No	No	No	No	Yes
New Jersey	Yes	No	No	Yes	No	No	No	No
New Mexico	Yes	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	Yes	Not Applicable
New York City ²⁶	No	No	No	No	No	No	No	Yes
North Carolina	No	No	No	No	No	No	No ²⁷	No ²⁸
North Dakota	Yes ²⁹	No ³⁰	No ³¹	Yes ³²	No ³³	No	No ³⁴	No

¹⁸ IA: Iowa does not conform to the Phase I Statement, Phase II Statement, or 2001 Amendment. Iowa provides guidance on Public Law 86-272 in Iowa Admin. Code r. 701-52.1.

¹⁹ KY: Partially.

²⁰ MD: Maryland does not follow the MTC's Phase I Statement, Phase II Statement or 2001 Amendment.

²¹ MI: Statements are not codified into law; however, Michigan follows the guidance with respect to PL 86-272. See RAB 2014-5.

²² MI: *Id.*

²³ MI: *Id.*

²⁴ MO: Missouri's application of PL 86-272 is found in 12 CSR 10-2.180, amended in 1994, which constitutes the changes made by the MTC at the 1993 annual meeting.

²⁵ NH: Rev 304.01(d) sets forth the lists of immune and non-immune activities. Note that these lists are similar to, but different from, the Phase I Statement.

²⁶ NYC: New York City complies with the requirements of Pub. L. No. 86-272, consistent with the U.S. Supreme Court's interpretation of the law in *Wisconsin Dep't of Rev. v. William Wrigley, Jr., Co.* 505 U.S. 214 (1992). See RCNY §§11-03, 11-04(b).

²⁷ NC: North Carolina is an associate member of the MTC. North Carolina statutes have not conformed to identify activities which are or are not protected under Public Law 86-272.

²⁸ NC: *Id.*

²⁹ ND: Have not published a designated list but may have additions or exceptions based on specific facts and circumstances of a situation.

³⁰ ND: *Id.*

³¹ ND: *Id.*

³² ND: *Id.*

³³ ND: *Id.*

³⁴ ND: Did not conform its laws, but does adhere to the policy.

State ¹	Signatory to Phase I Statement ²	Signatory to Phase I Statement, with additions or exceptions ³	Not a signatory to Phase I Statement, but has similar state law ⁴	Signatory to Phase II Statement ⁵	Signatory to Phase II Statement, with additions or exceptions ⁶	Not a signatory to Phase II Statement, but has similar state law ⁷	State law conforms to 2001 amendment ⁸	Does not conform ⁹
Oklahoma	No	No	No	No	No	No	No	No
Oregon	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Pennsylvania	No	No	No	No	No	No	No	No Response
Rhode Island	No	Yes	No	No	Yes	No	No	No
Tennessee	Yes	No	Not Applicable	No	Not Applicable	No	No	No
Texas	No	No	No	No	No	No	No	No ³⁵
Utah	No	Yes	No	No	Yes	No	Yes	No
Vermont ³⁶	No	No	No	No	No	No	No	Yes
Virginia	No ³⁷	No ³⁸	No Response ³⁹	No ⁴⁰	No ⁴¹	No Response ⁴²	No Response ⁴³	No
West Virginia	No	No	No	No	No	No	No	No
Wisconsin	No	No	Yes ⁴⁴	No	No	Yes ⁴⁵	Yes ⁴⁶	No

³⁵ TX: Public Law 86-272 does not apply to the revised Texas franchise tax. See Section 21 from Acts of the 79th Legislature, 3rd Called Session, 2006, House Bill 3 and Rule 3.586(e).

³⁶ VT: Vermont follows PL 86-272.

³⁷ VA: This information is available on the MTC's website.

³⁸ VA: *Id.*

³⁹ VA: The Department has issued numerous rulings related to whether specified activities are protected under Public 86-272. Some of these policies are consistent with those set forth by the MTC. These rulings are available on the Department's Laws, Rules & Decisions website at www.tax.virginia.gov/laws-rules-decisions.

⁴⁰ VA: This information is available on the MTC's website

⁴¹ VA: *Id.*

⁴² VA: The Department has issued numerous rulings related to whether specified activities are protected under Public 86-272. Some of these policies are consistent with those set forth by the MTC. These rulings are available on the Department's Laws, Rules & Decisions website at www.tax.virginia.gov/laws-rules-decisions.

⁴³ VA: *Id.*

⁴⁴ WI: Wisconsin's laws adhere to most of the MTC's guidance on P.L. 86-272.

⁴⁵ WI: *Id.*

⁴⁶ WI: *Id.*

Nexus Enforcement Policies

State ¹	Sends nexus questionnaire ²	Taxes whole year ³	Return for protected activities ⁴	Return if registered ⁵	Nexus for entire taxable year for trailing nexus ⁶	Nexus for entire taxable year, plus additional year, for trailing nexus ⁷	Nexus for entire taxable year, plus more than additional year, for trailing nexus ⁸
Alabama	Yes ⁹	Yes ¹⁰	Yes	Yes	Yes	No	No
Alaska	Yes ¹¹	Yes	Yes	No	Yes ¹²	No ¹³	No ¹⁴
Arizona	Yes ¹⁵	Yes	No	No	Yes	No	No
Arkansas	Yes	Yes	No	No	Yes ¹⁶	No ¹⁷	No ¹⁸
California	Yes ¹⁹	Yes	Yes ²⁰	Yes	Yes	Depends	Depends
Colorado ²¹	No Response	No	No	No Response²²	Yes	No	No
Connecticut	No	Yes	Yes	Yes	No Response ²³	No Response ²⁴	No
Delaware	Yes ²⁵	Yes	No	No	Yes	No	No
District of Columbia	Yes ²⁶	Yes	No	No	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state sends a nexus questionnaire to corporations that it believes might be doing business within its borders.

³ Your state imposes tax on a corporation that triggers nexus for the entire year (*i.e.*, including amounts in the sales factor that occurred before nexus was established).

⁴ Your state requires a tax return to be filed even if the corporation's activities are protected by Pub. L. No. 86-272.

⁵ Your state requires a tax return to be filed by a corporation that has registered in the state, but has not yet commenced doing business.

⁶ The state would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁷ The state would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁸ The state would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁹ **AL: There is no form number but the questionnaire may be found on our website.**

¹⁰ AL: All AL sales for the entire year would be included in the numerator of the sales factor if nexus is established during the year.

¹¹ AK: No official form number.

¹² AK: The answer does not depend on the magnitude of the nexus-creating activity.

¹³ AK: *Id.*

¹⁴ AK: *Id.*

¹⁵ AZ: Nexus Questionnaire Form ADOR 10894 (7/10).

¹⁶ AR: For Arkansas purposes, the magnitude of the nexus-creating activity does not matter.

¹⁷ AR: *Id.*

¹⁸ AR: *Id.*

¹⁹ CA: FTB Form 4684.

²⁰ CA: Assuming the taxpayer is doing business in California.

²¹ **CO: Presumption of one year but may be longer / shorter depending on facts.**

²² **CO: Registration creates nexus but does not require filing return until Colorado source income generated.**

²³ CT: DRS has no published position.

²⁴ CT: *Id.*

²⁵ DE: Nexus questionnaire available at <http://revenue.delaware.gov/services/Nex.shtml>.

²⁶ DC: Questionnaire Survey Form FR-176 is sent by an auditor.

State ¹	Sends nexus questionnaire ²	Taxes whole year ³	Return for protected activities ⁴	Return if registered ⁵	Nexus for entire taxable year for trailing nexus ⁶	Nexus for entire taxable year, plus additional year, for trailing nexus ⁷	Nexus for entire taxable year, plus more than additional year, for trailing nexus ⁸
Florida	Yes ²⁷	Yes	No	Yes	Yes ²⁸	No	No
Georgia	Yes	Yes	Yes	Yes ²⁹	Depends	Depends	Depends
Hawaii	Yes ³⁰	No ³¹	No	No	Depends	Depends	Depends
Idaho	Yes ³²	Yes	No ³³	Yes ³⁴	Yes	No	No
Illinois	No	Yes	Yes ³⁵	Yes ³⁶	Yes	No	No
Indiana	No	Yes	No	No	Yes ³⁷	No ³⁸	No ³⁹
Iowa ⁴⁰	Yes ⁴¹	Yes	No	No	Yes ⁴²	No ⁴³	No ⁴⁴
Kansas	Yes ⁴⁵	Yes	No	No	Yes	No	No
Kentucky	Yes ⁴⁶	Yes	Yes ⁴⁷	No ⁴⁸	Yes ⁴⁹	No ⁵⁰	No ⁵¹
Louisiana	Yes ⁵²	Yes	No ⁵³	Yes ⁵⁴	Yes ⁵⁵	No ⁵⁶	No ⁵⁷
Maine	Yes ⁵⁸	Yes	No	No	Yes ⁵⁹	No ⁶⁰	No ⁶¹

²⁷ FL: There is a nexus questionnaire sent to taxpayers, but it does not have a form number.

²⁸ FL: **The answer does not depend on the magnitude of the nexus-creating activity.**

²⁹ GA: Yes/Depends. Net Worth Return needs to be filed.

³⁰ HI: Nexus questionnaire sent to corporations being audited. There is no form number for the nexus questionnaire.

³¹ HI: Does not impose a tax on amounts in the sales factor that occurred before nexus was established, however, will impose taxes for period after nexus is established.

³² ID: No form number.

³³ ID: See Idaho Income Tax Administrative Rule 801.04 (IDAPA 35.01.01.801.04).

³⁴ ID: See Idaho Code sections 63-3030(3) and (4).

³⁵ IL: IITA Section 502(a)(2) requires corporations qualified to do business in Illinois and required to file a federal income tax return to file in Illinois regardless of tax liability.

³⁶ IL: *Id.*

³⁷ IN: No, our answer doesn't depend on the magnitude of the nexus-creating activity.

³⁸ IN: No, our answer doesn't depend on the magnitude of the nexus-creating activity. The answer assumes a permanent end to activity; otherwise, the answer is "yes."

³⁹ IN: *Id.*

⁴⁰ IA: As long as the activity was of a non-de minimis nature, it does not matter what nexus-creating activity occurred.

⁴¹ IA: The nexus questionnaire can be found at <https://tax.iowa.gov/sites/files/idr/forms1/NexusSurvey21-004f.pdf>.

⁴² IA: Nexus is present regardless of the magnitude of the activity.

⁴³ IA: **No nexus as long as the activity has completely stopped.**

⁴⁴ IA: *Id.*

⁴⁵ KS: But no form number.

⁴⁶ KY: Form 41A800.

⁴⁷ KY: A corporation is subject to limited liability entity tax (LLET) which is not protected by Pub. L. No. 86-272. LLET is the lesser of .00095 of gross receipts or .0075 of gross profits (minimum \$175).

⁴⁸ KY: If a Ky. corporation, yes. If a foreign corporation who merely fills out the certificate of authority to do business in Ky. but has not actually commenced doing business in Kentucky, then no.

⁴⁹ KY: Generally, it does not depend on the magnitude of the nexus-creating activity.

⁵⁰ KY: *Id.*

⁵¹ KY: *Id.*

⁵² LA: Form R-4310, **the Questionnaire to Assist in Determining Liability for Corporate Income Tax or Franchise Tax.**

⁵³ LA: A Corporation Income & Franchise Tax return would be required to be filed if requirement is met for franchise tax.

⁵⁴ LA: *Id.*

⁵⁵ LA: Answer does not depend on the magnitude [of the nexus-creating activity].

⁵⁶ LA: *Id.*

⁵⁷ LA: *Id.*

⁵⁸ ME: No form number has been assigned to the questionnaire.

⁵⁹ ME: No, the answers do not depend on the magnitude of the nexus-creating activity.

⁶⁰ ME: *Id.*

⁶¹ ME: *Id.*

State ¹	Sends nexus questionnaire ²	Taxes whole year ³	Return for protected activities ⁴	Return if registered ⁵	Nexus for entire taxable year for trailing nexus ⁶	Nexus for entire taxable year, plus additional year, for trailing nexus ⁷	Nexus for entire taxable year, plus more than additional year, for trailing nexus ⁸
Maryland	Yes	Yes	No	No	Yes ⁶²	No ⁶³	No ⁶⁴
Massachusetts ⁶⁵	Yes	Yes ⁶⁶	Yes	Yes	Yes	No	No
Michigan	Yes ⁶⁷	Yes	No	No	Yes ⁶⁸	No ⁶⁹	No ⁷⁰
Minnesota	Yes ⁷¹	Yes	No	No	Yes ⁷²	No	No
Mississippi	Yes ⁷³	No	Yes ⁷⁴	Yes	No ⁷⁵	No ⁷⁶	No ⁷⁷
Missouri	Yes	Yes	Yes	Yes	Yes ⁷⁸	No ⁷⁹	No ⁸⁰
Montana	Yes ⁸¹	Yes	Yes	Yes	Yes ⁸²	No ⁸³	No ⁸⁴
Nebraska	Yes ⁸⁵	Yes	No	No	Yes	No	No
New Hampshire	Yes ⁸⁶	Yes	No	No	No Response	No Response	No Response
New Jersey	Yes ⁸⁷	No	Yes	Yes	No ⁸⁸	No ⁸⁹	No ⁹⁰
New Mexico	Yes ⁹¹	Yes	Yes	Yes ⁹²	Yes ⁹³	No ⁹⁴	No ⁹⁵

⁶² MD: Answer does not depend on magnitude [of the nexus-creating activity.]

⁶³ MD: No, so long as the taxpayer files a final return in the year that the nexus-creating activity stops. Answer does not depend on magnitude [of the nexus-creating activity.]

⁶⁴ MD: Answer does not depend on magnitude [of the nexus-creating activity.]

⁶⁵ MA: See 830 CMR 63.39.1.

⁶⁶ MA: See 830 CMR 63.83.1.

⁶⁷ MI: Form 1353.

⁶⁸ MI: Once nexus has been established by a taxpayer during a tax year for CIT purposes, nexus exists for that taxpayer for the entire tax year. Answer does not depend on the magnitude of the nexus-creating activity.

⁶⁹ MI: Answer does not depend on the magnitude of the nexus-creating activity.

⁷⁰ MI: *Id.*

⁷¹ MN: Form C-101.

⁷² MN: Each taxable year is considered separately in determining nexus.

⁷³ MS: Our nexus questionnaire does not have a form number.

⁷⁴ MS: Will require a tax return if taxpayer has a franchise tax filing requirement. Public Law 86-272 does not apply to franchise tax.

⁷⁵ MS: Answers on "trailing nexus" do not depend on the magnitude of the nexus-creating activity. There is taxable nexus for a corporation until it stops business activity during the tax year.

⁷⁶ MS: *Id.*

⁷⁷ MS: *Id.*

⁷⁸ MO: This does not depend on the magnitude of activity. **(See Question 1 on Form 4458.)**

⁷⁹ MO: *Id.*

⁸⁰ MO: *Id.*

⁸¹ MT: Montana Department of Revenue Nexus Questionnaire - Montana Form "NEXUS" A9.

⁸² MT: Answer does not depend on magnitude of nexus creating activity.

⁸³ MT: *Id.*

⁸⁴ MT: *Id.*

⁸⁵ NE: Done via letter; no specific form or form number.

⁸⁶ NH: Form AU-15.

⁸⁷ NJ: Nexus Questionnaire.

⁸⁸ NJ: The answers do not depend on the magnitude of the nexus creating activity.

⁸⁹ NJ: *Id.*

⁹⁰ NJ: *Id.*

⁹¹ NM: Questionnaire does not have a form number.

⁹² NM: Yes to pay franchise tax.

⁹³ NM: The answers do not depend on the magnitude of the nexus-creating activity.

⁹⁴ NM: *Id.*

⁹⁵ NM: *Id.*

State ¹	Sends nexus questionnaire ²	Taxes whole year ³	Return for protected activities ⁴	Return if registered ⁵	Nexus for entire taxable year for trailing nexus ⁶	Nexus for entire taxable year, plus additional year, for trailing nexus ⁷	Nexus for entire taxable year, plus more than additional year, for trailing nexus ⁸
New York City	No	No	No ⁹⁶	Not Applicable	No	No	No
North Carolina	Yes ⁹⁷	Yes	Yes	Yes ⁹⁸	Yes ⁹⁹	No	No
North Dakota	Yes ¹⁰⁰	Yes	No	No	Yes ¹⁰¹	No ¹⁰²	No ¹⁰³
Oklahoma	No	No	No	No	Yes ¹⁰⁴	No ¹⁰⁵	No ¹⁰⁶
Oregon	Yes ¹⁰⁷	No	No	No	Yes ¹⁰⁸	No ¹⁰⁹	No ¹¹⁰
Pennsylvania	Yes ¹¹¹	Yes	Yes ¹¹²	Yes ¹¹³	Yes ¹¹⁴	No	No
Rhode Island	Yes ¹¹⁵	Yes	No	Yes	Yes ¹¹⁶	No ¹¹⁷	No ¹¹⁸
Tennessee	Yes ¹¹⁹	Yes ¹²⁰	Yes ¹²¹	Yes ¹²²	Yes ¹²³	No ¹²⁴	No ¹²⁵
Texas	Yes ¹²⁶	No	Yes ¹²⁷	No	No ¹²⁸	No ¹²⁹	No ¹³⁰
Utah	Yes ¹³¹	Yes	No ¹³²	Yes	Yes	No	No

⁹⁶ NYC: Form NYC-245 (Activities Report of Corporations) should be filed by any corporation that has an officer, employee, agent or representative in the City and claims not to be subject to the New York City General Corporation Tax and the New York City Business Corporation Tax.

⁹⁷ NC: Nexus Questionnaire Form # (No number is assigned).

⁹⁸ NC: A corporation that has registered to do business by obtaining a certificate of authority with the Secretary of State's Office must file an annual return and pay at least the minimum franchise tax.

⁹⁹ NC: Regardless of the nature of the tangible personal property, if the non-protected activity establishes a relationship in which the company conducts an activity systematically it will establish nexus even if the activity is infrequent.

¹⁰⁰ ND: No form number; questionnaire may be found at: <http://www.nd.gov/tax>.

¹⁰¹ ND: Answers do not depend on the magnitude of nexus, as long as U.S. Constitutional standards have been met.

¹⁰² ND: *Id.*

¹⁰³ ND: *Id.*

¹⁰⁴ OK: No, [the answer does not depend on the magnitude of the nexus-creating activity.]

¹⁰⁵ OK: *Id.*

¹⁰⁶ OK: *Id.*

¹⁰⁷ OR: Oregon's questionnaire is tailored to each business; not a generic form.

¹⁰⁸ OR: Magnitude of the nexus-creating activity does not affect determination.

¹⁰⁹ OR: *Id.*

¹¹⁰ OR: *Id.*

¹¹¹ PA: REV-203.

¹¹² PA: Capital Stock Franchise Tax applies to corporations that have income tax protection under Pub. L. No. 86-272.

¹¹³ PA: *Id.*

¹¹⁴ PA: No, [the answer does not depend on the magnitude of the nexus creating activity.]

¹¹⁵ RI: Rhode Island Nexus Questionnaire.

¹¹⁶ RI: Answers do not depend on the magnitude of nexus-creating activity.

¹¹⁷ RI: *Id.*

¹¹⁸ RI: *Id.*

¹¹⁹ TN: Form RV-2050. SEATA nexus questionnaires from other states are also reviewed.

¹²⁰ TN: Absence of Tennessee property, payroll and sales in the apportionment factors prior to nexus will automatically adjust the tax base.

¹²¹ TN: Only the franchise tax is due - no excise tax based on income is due.

¹²² TN: Only the \$100 minimum franchise tax is due. (See T.C.A. Sec. 67-4-2119).

¹²³ TN: Answers do not depend on the magnitude of nexus-creating activity.

¹²⁴ TN: *Id.*

¹²⁵ TN: *Id.*

¹²⁶ TX: Form AP-114 Texas Nexus Questionnaire.

¹²⁷ TX: Public Law 86-272 does not apply to the revised Texas franchise tax. See Section 21 from Acts of the 79th Legislature, 3rd Called Session, 2006, House Bill 3 and Rule 3.586(e).

¹²⁸ TX: Texas has no de minimis nexus standard.

¹²⁹ TX: *Id.*

¹³⁰ TX: *Id.*

¹³¹ UT: Form TC-51.

¹³² UT: Only if qualified to do business in Utah.

State ¹	Sends nexus questionnaire ²	Taxes whole year ³	Return for protected activities ⁴	Return if registered ⁵	Nexus for entire taxable year for trailing nexus ⁶	Nexus for entire taxable year, plus additional year, for trailing nexus ⁷	Nexus for entire taxable year, plus more than additional year, for trailing nexus ⁸
Vermont	No	Yes ¹³³	No	No	Yes	No	No
Virginia	No	Yes	No ¹³⁴	Yes ¹³⁵	Yes	No	No
West Virginia	Yes ¹³⁶	No	Yes	No	Yes	No	No
Wisconsin	Yes ¹³⁷	Yes ¹³⁸	Yes ¹³⁹	Yes	Yes ¹⁴⁰	No ¹⁴¹	No ¹⁴²

¹³³ VT: To the extent the nexus triggering activity also affects their sales volume calculation, the apportionment of income for the year will affect the amount of tax due.

¹³⁴ VA: Note that a tax return is only required if the corporation has registered with the State Corporation Commission for the privilege of doing business in Virginia; otherwise, a tax return is not required. See 23 VAC 10-120-310(A).

¹³⁵ VA: See 23 VAC 10-120-310(A).

¹³⁶ WV: WV/NEXUS Rev. 2014.

¹³⁷ WI: Form A-816.

¹³⁸ WI: Nexus once established is for the entire year.

¹³⁹ WI: Provided corporation is registered with the state.

¹⁴⁰ WI: Our answers do not depend on the magnitude of the activity.

¹⁴¹ WI: *Id.*

¹⁴² WI: *Id.*

Nexus-Creating Activities

Survey Identifies Activities That Create Income Tax Nexus

In this year's survey, we asked the states about over 130 different activities or relationships that could potentially create income tax nexus for corporations. We instructed the states to assume the listed activity or relationship is the only such activity or relationship that a corporation has in the state. The resulting responses highlight the states' variable and often confusing application of nexus policy when determining activities that are sufficient to create nexus.

Non-Sales Related Employee Activities

As in previous years, we asked the states a series of questions relating to whether an employee flying into the state under various circumstances would create nexus. First, we asked whether flying into the state on a commercial airline for business purposes would do so. Twenty-two states responded that this would create nexus for the corporation. The states' answers remained the same regardless of the number of flights (one to four vs. five or more) that the employee took during the year.

Flying into the state on a company plane is significantly less likely to create nexus. Only four states indicated that having an employee fly into the state on a company plane to attend a seminar would create nexus. Flying into the state on a company plane to attend sports events between four and 10 times per year was slightly more likely to create nexus, with six states responding "yes."

Having a minimal number of telecommuting employees who conduct non-solicitation activities is enough to create nexus in 40 states. A similar number of states also indicated that a single telecommuting employee would create nexus if they are performing back-office functions (39 states) or participating in product development functions (38 states).

Sales Related Employee Activities

States showed slightly more variety in their responses to employee sales-related activities. While 24 states indicated that negotiating prices would create nexus again this year, 18 states (up two from last year) indicated that it would not. Thirteen states indicated that checking a customer's inventory for reorder was enough to create nexus, but 27 states indicated that it would not create nexus.

States are split over whether a de minimis sale creates nexus, with 20 states responding that a single de minimis sale would create nexus, and 20 states responding that it would not. When it comes to one non-de minimis sale, however, there is no doubt that nexus is created. Thirty-eight states responded "yes" and only three states said "no."

Ownership Interest in Pass-Through Entities

The states are uncharacteristically uniform in their nexus treatment of pass-through entity ownership, with the vast majority of states agreeing that owning an interest in a pass-through entity, no matter what type of ownership interest is held creates nexus. Over 80 percent of the states indicated that nexus would be created when an out-of-state corporation owns any of the following pass-through entity interests:

- Investment LLC or partnership interest (38 states),
- General partnership interest (45 states),
- Limited partnership interest (40 states),
- Management LLC interest (44 states),
- Non-management LLC interest (40 states) and
- Disregarded entity interest (43 states).

For more information, see:

Corporate Income Tax Navigator at 2.1.

Portfolio 1400-2nd: Federal Constitutional Limitations on State Taxation

Portfolio 1410-2nd: Limitations on States' Jurisdiction to Impose Net Income Based Taxes

Portfolio 1430-2nd: Jurisdictional Limitations: Attributional Nexus

In stark contrast to the majority of states, ownership of a general partnership interest is the only one of these interests that would create nexus in Tennessee.

This year, we added questions addressing whether owning an interest in an entity that only generates passive income would create nexus. When the entity limits its activities in the state to managing investment assets, 37 states said owning a managing interest would create nexus, but only 31 states said owning a limited interest would. In most states, an ownership interest in an entity that only manages real property located in-state would create nexus. The type of interest owned was of little consequence in this case, with 39 states responding “yes” for a management interest and 38 states for a limited interest.

Cloud Computing and Software as a Service

When providing access to software and soliciting business in the state is classified as a sale of tangible property (and thus subject to Pub. L. No. 86-272), only 19 states indicated that the sale would create nexus. But when providing access to software and soliciting business in the state is not classified as the sale of tangible property (and is thus not under the protection of Pub. L. No. 86-272), the vast majority of states—35—would impose nexus.

While most states would find nexus if a corporation provides access to software and the customer has an in-state billing address, a substantial minority—11 states—would not find nexus in that case.

Almost all states responded that renting space on a third-party server located in the state creates nexus.

The states’ responses to these questions and many others regarding nexus-creating activities for corporate income tax can be found in the charts on the following pages.

Nexus-Creating Activities: General Activities (Part 1 of 2)

State ¹	Doing business ²	Sales via 800 number ³	In-state phone listing ⁴	Local phone no. ⁵	Maintains bank account ⁶
Alabama ⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	No Response ⁸	No Response ⁹	No Response ¹⁰	No
Arizona	Yes	No	Yes	No	No
Arkansas	No	Yes	Yes	Yes	Yes
California	Yes	Depends	No	No	Depends
Colorado	Yes	No ¹¹	No ¹²	Yes ¹³	No ¹⁴
Connecticut	Yes	No Response ¹⁵	No Response ¹⁶	No Response ¹⁷	No
Delaware	Yes	No	No	No	No
District of Columbia	Yes	Yes	No	Yes	Yes
Florida	Yes	No	No	No	No
Georgia	Yes	No	Yes	Yes	No
Hawaii ¹⁸	Yes	No	Yes ¹⁹	Yes ²⁰	No
Idaho	Yes	No	No	No	No
Illinois	Yes	No	Yes	Yes	No
Indiana	Yes	No	No	No	No
Iowa	No	Yes	No	No	No
Kansas	Yes	No	No	No	No
Kentucky	Yes	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² The out-of-state corporation is doing business in your state.

³ The out-of-state corporation makes sales to customers in your state by means of an 800 telephone order number.

⁴ The out-of-state corporation is listed in the local telephone books of cities in your state.

⁵ The out-of-state corporation uses local phone numbers in your state, which are forwarded to its headquarters located in another state.

⁶ The out-of-state corporation maintains a bank account at a bank located in your state.

⁷ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Factor Presence nexus only.**

⁸ AK: Alaska has no position at this time.

⁹ AK: *Id.*

¹⁰ AK: *Id.*

¹¹ CO: Must meet nexus threshold.

¹² CO: *Id.*

¹³ CO: If meets nexus dollar or percentage threshold.

¹⁴ CO: Must meet nexus threshold.

¹⁵ CT: To the extent that answers relate to economic nexus, bright-line test for receipts must be met. *See* IP 2010(29.1).

¹⁶ CT: *Id.*

¹⁷ CT: *Id.*

¹⁸ HI: *See* Tax Information Release No. 95-3, "Immunity from Net Income Taxation Under Public Law 86-272."

¹⁹ HI: Unless protected under PL 86-272.

²⁰ HI: *Id.*

State ¹	Doing business ²	Sales via 800 number ³	In-state phone listing ⁴	Local phone no. ⁵	Maintains bank account ⁶
Louisiana	Yes	No	No	No	Yes
Maine	Yes	No	Yes	Yes	No
Maryland	Yes	Yes ²¹	No	No	No
Massachusetts ²²	Yes	Depends	Depends	Depends	No
Michigan	No Response ²³	No ²⁴	No ²⁵	No ²⁶	No
Minnesota	Depends ²⁷	Yes	Yes	Yes	No
Mississippi	Yes	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	No
Montana	No	No	No ²⁸	No	No
Nebraska	Yes	No ²⁹	No	No	Yes ³⁰
New Hampshire	Yes	Depends	Yes	Depends	Yes
New Jersey	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	No
New York City	Yes	No	No	No	No
North Carolina	Yes	No	No	No	No
North Dakota	Yes	No	No	No	No
Oklahoma	Depends	No	No	No	No
Oregon	Yes	Yes	Yes	Yes	No
Pennsylvania	Yes	No	No	No	No
Rhode Island	Yes	Yes	No	No	No
South Carolina	Yes	No	No Response	No	No
Tennessee	Yes ³¹	No ³²	Yes ³³	Yes ³⁴	No
Texas	Yes	No	No	No	No

²¹ MD: Depends on method of advertising.

²² MA: See TIR 03-19, 98-13, DD 96-2, LR 05-8 and 830 CMR 63.39.1.

²³ MI: Yes, if the corporation's activities meets at least one of the provisions of MCL 206.621(1).

²⁴ MI: Active solicitation, which these activities may demonstrate, plus Michigan gross receipts of \$350,000 will constitute nexus with Michigan.

²⁵ MI: *Id.*

²⁶ MI: *Id.*

²⁷ MN: Depends on the meaning of "doing business." Yes if the business obtains or regularly solicits business within the state.

²⁸ MT: So long as calls are not made to facilities described in paragraphs IV.A.16c and IV.A.16g of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272.

²⁹ NE: If the corporation utilizes a telemarketing service located in Nebraska to solicit sales through an 800 number, then nexus is established.

³⁰ NE: Assuming it is not de minimis.

³¹ TN: The minimum \$100 franchise tax would be due.

³² TN: Answer assumes the corporation's sales to customers in Tennessee do not exceed \$500,000 or 25% of the corporation's total sales.

³³ TN: Answers may depend on the specific facts and circumstances involved, but generally a business listed in a Tennessee telephone directory makes itself available to the general public to conduct Tennessee business transactions of a taxable nature.

³⁴ TN: *Id.*

State ¹	Doing business ²	Sales via 800 number ³	In-state phone listing ⁴	Local phone no. ⁵	Maintains bank account ⁶
Utah	Depends ³⁵	No	No	Yes	No
Vermont ³⁶	Yes	Yes	No	No	No
Virginia	Yes	No ³⁷	No	No	No
West Virginia	Yes	No	No	No	Yes
Wisconsin	Yes	No	No	No	No

³⁵ UT: Doing business does not necessarily equate to having nexus. For example, a corporation may be doing business in this state but exempt from taxation under Public Law 86-272; further, the Utah definition of doing business includes the right to do business through qualification to do business in the state. However, mere qualification to do business by itself, does not create nexus in the state. Finally, a corporation may be conducting a de minimis amount of business in the state and not have nexus pursuant to Utah Administrative Rule R865-6F-6.

³⁶ VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.**

³⁷ VA: See P.D. 93-6.

Nexus-Creating Activities: General Activities (Part 2 of 2)

State ¹	Provides 6 or fewer days of consulting ²	Provides warranty services ³	Sends catalogs ⁴	De minimis activity/standard ⁵	Apply "transacting business" definition ⁶
Alabama ⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	No Response ⁸	Yes	No	No	No
Arizona	Yes	Yes	No	Yes ⁹	Yes
Arkansas	Yes	Yes	No	Yes ¹⁰	No
California	Yes	Yes	No	No	No
Colorado	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴	No
Connecticut	No Response ¹⁵	No Response ¹⁶	No Response ¹⁷	No Response ¹⁸	No ¹⁹
Delaware	Yes	Yes	No	No	No
District of Columbia	Yes	Yes	No	No	Yes
Florida	Yes	Yes	No	No	No
Georgia	Yes	Yes	No	No ²⁰	No
Hawaii ²¹	Yes	Yes	No	Depends	Yes
Idaho	Yes	Yes	Depends	No ²²	No ²³

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The corporation provides six or fewer days of consulting services in your state during the year.

³ The corporation, through a third party, provides warranty services on goods sold in your state.

⁴ The corporation sends catalogs to residents in your state.

⁵ Does your state have a de minimis standard? If yes, please explain, including whether the standard is based on the number of activities performed or the number of days that an activity is performed in your state.

⁶ Does your state apply the definition of "transacting business" or "doing business" used to determine whether an out-of-state company must register with the Secretary of State, or other similar agency, when determining whether the out-of-state corporation has nexus with your state?

⁷ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Factor Presence nexus only.**

⁸ AK: Alaska has no position at this time.

⁹ AZ: See CTR 99-5.

¹⁰ AR: See Arkansas Reg. 6.26-51-702 - not based on a specific number of activities. Arkansas Reg. 8.26-51-702(14) bases nexus on whether a sample or display room is maintained for more than 14 days at any one location within Arkansas.

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² CO: *Id.*

¹³ CO: If meets nexus dollar or percentage threshold. Catalogs treated as corporation's property in Colorado.

¹⁴ CO: If meets nexus dollar or percentage threshold. Colorado conforms to "Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law 86-272."

¹⁵ CT: To the extent that answers relate to economic nexus, bright-line test for receipts must be met. See IP 2010(29.1).

¹⁶ CT: *Id.*

¹⁷ CT: *Id.*

¹⁸ CT: *Id.*

¹⁹ CT: See Conn. Gen. Stat. §12-213(a)(20).

²⁰ GA: Georgia's de minimis standard has not been defined.

²¹ HI: See Tax Information Release No. 95-3, "Immunity from Net Income Taxation Under Public Law 86-272."

²² ID: Except for trucking companies - See MTC Trucking Regulation.

²³ ID: Depends on the facts.

State ¹	Provides 6 or fewer days of consulting ²	Provides warranty services ³	Sends catalogs ⁴	De minimis activity/standard ⁵	Apply "transacting business" definition ⁶
Illinois	Yes	Yes ²⁴	No	Yes ²⁵	Yes
Indiana	Yes	No	No	No	No
Iowa	Yes	Yes	No	No ²⁶	No
Kansas	Yes	Yes	No	No	No
Kentucky	Yes	Yes ²⁷	No	Yes ²⁸	Yes ²⁹
Louisiana	Yes	Yes	No	No ³⁰	Yes
Maine	Yes	Yes	No	Yes ³¹	No
Maryland	Yes	Yes	No	No	Yes
Massachusetts	Depends ³²	Depends ³³	No ³⁴	No ³⁵	Yes
Michigan	Yes ³⁶	Yes ³⁷	No ³⁸	Yes ³⁹	No
Minnesota	Yes	Yes	Yes	No ⁴⁰	No
Mississippi	Yes	Yes	No ⁴¹	No	Yes
Missouri	Yes	Yes	No	No	No
Montana	Yes	Yes	No	Yes ⁴²	No
Nebraska	Yes	Yes	Yes	Yes ⁴³	No
New Hampshire	Yes	Depends	Depends	No	No
New Jersey	Yes	Yes	No	No	Yes
New Mexico	Yes	Yes	Yes	Yes ⁴⁴	Yes
New York City	Yes	No Response	No	Yes⁴⁵	No
North Carolina	Yes	Yes	No	No	No
North Dakota	Yes	Yes	No	No	No

²⁴ IL: If work is performed by an agent of the taxpayer.

²⁵ IL: Illinois has no specific definition of "de minimis."

²⁶ IA: The de minimis standard is based on the totality of all types of nonsolicitation activities, and is determined on a case by case basis.

²⁷ KY: See Paragraph (b) of subsection (4) of Section 4 of 103 KAR 16:240.

²⁸ KY: De minimis is determined on the facts and circumstances.

²⁹ KY: KRS 14A.9-010 dictates when a foreign corp has to register with the Secretary of State and it doesn't necessarily mirror DOR statutes and regulations.

³⁰ LA: La. R.S. 47:287.95(C)(2)(a) contains a de minimis rule specifically for trucking companies.

³¹ ME: See Rule 808.04(C).

³² MA: See TIR 03-19, 98-13, DD 96-2, LR 05-8 and 830 CMR 63.39.1.

³³ MA: *Id.*

³⁴ MA: *Id.*

³⁵ MA: *Id.*

³⁶ MI: If physically present in Michigan 2 or more days.

³⁷ MI: *Id.*

³⁸ MI: Active solicitation, which this activity may demonstrate, plus Michigan gross receipts of \$350,000 will constitute nexus with Michigan.

³⁹ MI: Physical presence of 1 day or less and active solicitation of sales in Michigan with Michigan gross receipts under \$350,000.

⁴⁰ MN: Minnesota has enacted amounts that create presumptions of nexus, but has not enacted de minimis standards.

⁴¹ MS: If the catalogs are sent directly to customers in the state, nexus is not created. If an in-state corporation acts as an agent for the out-of-state seller, nexus is created.

⁴² MT: See Administrative Rules of Montana 42.26.504 and 42.26.706.

⁴³ NE: U.S. Supreme Court case law and see Nebraska Revenue Ruling 24-08-1.

⁴⁴ NM: For only trucking entities, neither owns nor rents property, nor makes any pick-ups or deliveries, nor travels more than 25,000 miles (NM miles must be < than 3% total miles), nor makes more than 12 trips into NM.

⁴⁵ NYC: See 19 RCNY Sec. 11-04(c)(vi) regarding trade shows.

State ¹	Provides 6 or fewer days of consulting ²	Provides warranty services ³	Sends catalogs ⁴	De minimis activity/standard ⁵	Apply "transacting business" definition ⁶
Oklahoma	No	No	No	No	No Response ⁴⁶
Oregon	Yes	Yes	Yes	No	No
Pennsylvania	Yes	Yes	No	No	No
Rhode Island	Yes	No	No	Yes ⁴⁷	No Response ⁴⁸
South Carolina	No Response	Yes ⁴⁹	No	Yes ⁵⁰	No Response
Tennessee	Yes ⁵¹	Yes ⁵²	Yes	Yes ⁵³	Not Applicable
Texas	Yes	Yes	No	No	No
Utah	No	Yes	Yes	No ⁵⁴	No
Vermont ⁵⁵	Yes	Yes	No	No	No
Virginia	Yes ⁵⁶	No ⁵⁷	No ⁵⁸	Yes ⁵⁹	No ⁶⁰
West Virginia	Yes	Yes	No	Yes ⁶¹	Yes
Wisconsin	Yes	Yes ⁶²	No	No	No ⁶³

⁴⁶ OK: Check with Secretary of State.

⁴⁷ RI: On a case-by-case determination.

⁴⁸ RI: Unable to answer as this is not administered by the Division of Taxation.

⁴⁹ **SC: If not de minimis and if the services are conducted on behalf of the out-of-state corporation. Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.**

⁵⁰ SC: South Carolina has a de minimis standard and follows the principles defined by case law. See *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214 (1992), SC Revenue Ruling #97-15, SC Private Letter Ruling #94-8, and SC Code Section 12-6-4920.

⁵¹ TN: Answer given assumes that the corporation's employees come into Tennessee to perform the services rendered.

⁵² TN: Answer assumes that an agency relationship exists between the corporation and the third party.

⁵³ TN: No specific number of days or specific activities. See TCA §67-4-2004(14)(e) for de minimis activities.

⁵⁴ UT: De minimis is defined as those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy whether or not in writing will not normally be considered trivial.

⁵⁵ VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

⁵⁶ VA: See P.D. 93-6, P.D. 09-172, and P.D. 13-172.

⁵⁷ VA: See P.D. 04-173, P.D. 08-184, and P.D. 09-44.

⁵⁸ VA: See P.D. 95-103.

⁵⁹ VA: Virginia's de minimis standard is based on the nature, continuity, and regularity of the activities conducted in the state. See 23 VAC 10-120-90G.

⁶⁰ VA: All corporations having income from Virginia sources are subject to Virginia income tax regardless of whether or not they are required to obtain a certificate of authority. See 23 VAC 10-120-20, subsection B1 under the definition of "income and deductions from Virginia sources."

⁶¹ WV: WV Code 11-24-7b provides a de minimis standard of activity to establish nexus for financial organizations based on soliciting business with 20 or more persons in the State, or if the sum of the value of its gross receipts attributable to sources in this State equals or exceeds \$100,000.

⁶² WI: Yes, provided the corporation supervises, monitors, inspects, approves, or is ultimately responsible for the work performed by the third party.

⁶³ WI: No, we do not use these definitions to determine nexus. However, registering with the Department of Financial Institutions does create a filing requirement with us. Please refer to Wisconsin Tax Bulletin 34, page 12, at <http://www.revenue.wi.gov/ise/wtb/034tr.pdf>.

Nexus-Creating Activities: Registration with State Agencies/Departments

State ¹	Registered with Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Registered for payroll ⁵	Registered for workers' comp ⁶	Registered as gov't vendor or contractor ⁷
Alabama	No	No	No	No	No	No
Alaska	No	No	No	No	No	No
Arizona	No	No	No	No	No	No
Arkansas	No	No	No	Yes	No	Yes
California	No	Depends	Depends	Depends	Depends	Depends
Colorado ⁸	No Response	No Response	No Response	No Response	No Response	No Response
Connecticut	Yes ⁹	Depends	Depends	Depends	Depends	Depends
Delaware ¹⁰	No	No	No	No	No	No
District of Columbia	No	Yes	Yes	No	Yes	Yes ¹¹
Florida	No ¹²	No	Yes	No	No	No
Georgia	No	No Response	No Response	No Response	No Response	No Response
Hawaii	No	No	No	No	No	No
Idaho	Yes¹³	Yes¹⁴	Depends ¹⁵	Depends ¹⁶	Depends ¹⁷	Yes¹⁸
Illinois	No	No	No	No	No	No
Indiana	No	No	No	No	No	No
Iowa ¹⁹	No	No	No	No	No	No
Kansas	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.

³ The out-of-state corporation holds a general business license issued by your state.

⁴ The out-of-state corporation holds a specialty license issued by your state, such as a specialty insurance license.

⁵ The out-of-state corporation is registered with the state tax department for payroll purposes.

⁶ The out-of-state corporation is registered with the state agency or department that regulates or administers workers' compensation.

⁷ The out-of-state corporation is registered with the state as a government vendor or contractor.

⁸ **CO: Factor Presence Nexus standard governs nexus.**

⁹ CT: See Conn. Agencies Regs. § 12-214-1(b).

¹⁰ DE: A corporation can choose to register with the Delaware Dept. of State for organizational purposes, but must register with the Delaware Division of Revenue and obtain a business license if they are engaged in business in the State of DE. The corporation should contact all other State agencies to determine registration requirements.

¹¹ DC: Yes, if performing activity in DC.

¹² FL: See Rule 12C-1.022(2)(c), F.A.C.

¹³ ID: See Idaho Code section 63-3025(1).

¹⁴ ID: *Id.*

¹⁵ ID: Depend on the facts and the level of activity.

¹⁶ ID: *Id.*

¹⁷ ID: *Id.*

¹⁸ ID: See Idaho Code section 63-3025(1).

¹⁹ IA: The mere fact that a corporation is registered with the Secretary of State or other state agency, or has a license, does not, in and of itself, create nexus.

State ¹	Registered with Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Registered for payroll ⁵	Registered for workers' comp ⁶	Registered as gov't vendor or contractor ⁷
Kentucky	No	No	No	No	No	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	No	No	No	No	No	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts ²⁰	Yes	Depends	Depends	Depends	Depends	Depends
Michigan	No	No Response ²¹	No	Yes ²²	Yes ²³	No
Minnesota	No	No	No	No	No	No
Mississippi	No	No	No	No	No	No
Missouri	No	No	No	No	No	No
Montana	No	No	No	No	No	No
Nebraska ²⁴	No Response	No Response	No Response	No Response	No Response	No Response
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	No	No	No	No	No	No
New York City	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No Response
North Carolina	No	No	No	No	No	No
North Dakota	No	No	No	No	No	No
Oklahoma	No Response ²⁵	No Response	No Response ²⁶	No Response ²⁷	No Response ²⁸	No Response
Oregon	No	No	No	No	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island ²⁹	No	No	No	No	No	No
South Carolina	No	No	No	No Response	No Response	No
Tennessee ³⁰	No	No	No	No	No	No
Texas	No	No	No	No	No	No
Utah	No ³¹	No	No	No	No	No
Vermont	Yes	Yes	Yes	Yes	Yes	Yes

²⁰ MA: Pursuant to G.L. c. 63, s. 39, a corporation has nexus in Massachusetts if it is qualified to do business in this state or actually doing business in this state.

²¹ MI: Refer to RAB 2014-5.

²² MI: Answer assumes corporation has employees present in Michigan.

²³ MI: *Id.*

²⁴ NE: Not enough facts to make a nexus determination.

²⁵ OK: Check with Secretary of State.

²⁶ OK: Check with Insurance Commission.

²⁷ OK: Oklahoma Tax Commission registers withholding accounts.

²⁸ OK: Check with Workers' Compensation Commission.

²⁹ RI: Registration for these activities alone do not create nexus, however any of the activities related to these registrations would create the nexus.

³⁰ TN: Registration alone does not satisfy nexus. However, the acts the company engages in order for it to think that it should register may satisfy nexus.

³¹ UT: Mere qualification to do business does not create nexus. However, such a corporation would be required at the least to file a Utah corporation franchise tax return and pay the minimum tax.

State ¹	Registered with Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Registered for payroll ⁵	Registered for workers' comp ⁶	Registered as gov't vendor or contractor ⁷
Virginia	Yes ³²	Not Applicable ³³	Yes ³⁴	Yes ³⁵	Not Applicable ³⁶	Not Applicable ³⁷
West Virginia	No	No	No	No	No	No
Wisconsin	No ³⁸	No	No	No	No	No

³² VA: Pursuant to 23 VAC 10-120-310, every corporation organized under the laws of Virginia and every foreign corporation registered with the State Corporation Commission for the privilege of doing business in Virginia shall file a return with the Department of Taxation under this section. A return must be filed even if the corporation has no income from Virginia sources and no Virginia income tax is due.

³³ VA: Virginia does not have a statewide general business license.

³⁴ VA: Insurance companies are subject to the Virginia Insurance Premiums License Tax, which is an annual license tax based on direct gross premium income, in lieu of the Virginia Corporate Income Tax. **See Va. Code §58.1-2500 et seq.**

³⁵ VA: Pursuant to 23 VAC 10-120-190, the total wages reported to Virginia for unemployment company purposes are generally presumed to be paid in Virginia for purposes of determining the company's Virginia payroll factor. *See* P.D. 12-151 and P.D. 06-76.

³⁶ VA: The Department has not published guidance on these issues.

³⁷ VA: *Id.*

³⁸ WI: Registration with the Department of Financial Institutions (formerly the Secretary of State) creates a filing requirement with Wisconsin even if no business is transacted in our state. Merely registering to transact business does not, however, create nexus.

Nexus-Creating Activities: Ownership/Leasing of In-State Property (Part 1 of 2)

State ¹	Owens raw land ²	Stores inventory ³	Ships in-process inventory ⁴	Consigns goods ⁵	Owens display racks ⁶	Owens tooling ⁷	Leases real estate ⁸	Leases mobile property ⁹
Alabama ¹⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Colorado ¹¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut	Yes	Yes	Depends	Yes	Depends	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes ¹²	Yes	Yes	Yes ¹³	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Illinois ¹⁴	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes ¹⁵	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation owns raw land.

³ The out-of-state corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year.

⁴ The out-of-state corporation ships in-process inventory to an unrelated party in your state solely for processing.

⁵ The out-of-state corporation consigns goods to vendors, independent contractors, or other parties.

⁶ The out-of-state corporation owns display racks.

⁷ The out-of-state corporation owns tooling, molds, dies, etc., located at a manufacturing facility in your state.

⁸ The out-of-state corporation leases (as lessor) real estate in the state to an unrelated third party.

⁹ The out-of-state corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in your state five or fewer times per year.

¹⁰ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established if AL property > \$50,000.**

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² HI: If a foreign corporation is a manufacturer of inventory or other goods, the answer is no. See Hawaii Revised Statutes §235-6.

¹³ HI: Racks are not as described in paragraphs IV.B.4 and IV.B.10 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law No. 86-272.

¹⁴ IL: See Department Regulations Section 100.9720(c)(5)(D) and (E).

¹⁵ IA: Owning property at a distribution facility may not create nexus due to Iowa Code section 422.34A(8).

State ¹	Owns raw land ²	Stores inventory ³	Ships in-process inventory ⁴	Consigns goods ⁵	Owns display racks ⁶	Owns tooling ⁷	Leases real estate ⁸	Leases mobile property ⁹
Maryland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes	Depends	Yes	Yes	Depends
Michigan ¹⁶	Yes	Yes ¹⁷	Yes	Yes	Yes ¹⁸	Yes	Yes	Yes ¹⁹
Minnesota	Yes	No	Yes ²⁰	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes²¹
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	No	Yes	Yes	No	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes ²²	Yes	Yes	Yes ²³	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	Yes	Yes	No Response
Tennessee	Yes	Yes	No	Yes	No	No ²⁸	Yes	Yes ²⁹
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes ³⁰	Yes	Yes	Yes	Yes	Yes ³¹

¹⁶ MI: For all questions in this survey that do not reference a number of days or times, e.g., “for fewer than 30 days per year” it is assumed that there is a physical presence in Michigan for 2 or more days.

¹⁷ MI: If the property is in Michigan 2 or more days.

¹⁸ MI: Unless without charge or other consideration.

¹⁹ MI: If the property is in Michigan 2 or more days.

²⁰ MN: Exemption provided for paper stock provided to in-state printer.

²¹ **NYC: Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.**

²² PA: Statutory exception for printing and metallurgy.

²³ PA: Statutory exception for metallurgy.

²⁴ SC: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under SC Code Section 12-6-555.

²⁵ SC: Except for processing in connection with a printing contract under SC Code Section 12-6-555.

²⁶ SC: Except for independent contractors under Public Law 86-272.

²⁷ SC: Furnishing and setting up display racks and advising customers on the display of the company’s products without charge or other consideration is a protected activity under SC Revenue Ruling #97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines.

²⁸ TN: Answer given assumes no rent is paid by the manufacturer for use of the tooling, molds, dies, etc. See Tenn. Code Ann. Section 67-4-2004(14)(E)(iii).

²⁹ TN: Answer given assumes that the property is leased in Tennessee.

³⁰ UT: Except at a printer’s facility.

³¹ UT: Unless activity is de minimis.

State ¹	Owens raw land ²	Stores inventory ³	Ships in-process inventory ⁴	Consigns goods ⁵	Owens display racks ⁶	Owens tooling ⁷	Leases real estate ⁸	Leases mobile property ⁹
Vermont ³²	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Virginia	Yes	Yes ³³	No ³⁴	Yes	Yes	Yes ³⁵	Yes	Yes
West Virginia	Yes	No	Yes	Yes	Yes	Yes ³⁶	Yes	Yes
Wisconsin	Yes	Yes	No	Yes	No	No	Yes	Yes

³² VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³³ VA: Temporary storage, however, may be de minimis. See 23 VAC 10-120-90G.

³⁴ VA: See P.D. 86-4.

³⁵ VA: Except for printing plates. See Va. Code §58.1-401(7).

³⁶ WV: A Taxpayer can have sufficient nexus to render the Taxpayer subject to Corporation Net Income Tax, yet still not be subjected to the Tax if the Taxpayer is not “engaging in business . . . or deriving income from . . . sources in this State.” See W. Va. Code §11-24-4.

Nexus-Creating Activities: Ownership/Leasing of In-State Property (Part 2 of 2)

State ¹	Co. cars for sales reps ²	Co. cars for employees ³	Owns/leases equipment ⁴	Holds title until contract price is paid ⁵	Files security interest ⁶	Owns place for staff ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	Yes	Yes	Yes	No	Yes ⁹
Arkansas	No	Yes	Yes	Yes	Yes	Yes ¹⁰
California	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	Yes ¹¹	Yes ¹²	Yes ¹³	No	No	Yes ¹⁴
Connecticut	Depends	Yes	Yes	Depends	Depends	Yes
Delaware	No	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	No	Yes
Florida	No ¹⁵	Yes	Yes	Yes	Yes	Yes
Georgia	Depends ¹⁶	Yes	Yes	Yes	Yes	Yes
Hawaii	No ¹⁷	No ¹⁸	Yes ¹⁹	Yes ²⁰	No	Yes ²¹
Idaho	No ²²	Yes	Yes ²³	Yes	Yes	Yes
Illinois ²⁴	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	No	Yes
Iowa	No	Yes	Yes	Yes	Yes	Yes
Kansas	No	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation owns or leases automobiles provided to salespersons.

³ The out-of-state corporation owns or leases trucks or automobiles used by non-salespersons.

⁴ The out-of-state corporation owns or leases other machinery or equipment.

⁵ The out-of-state corporation holds title to property located in your state until the contract price has been paid.

⁶ The out-of-state corporation files a security interest on inventory sold until the contract price has been paid.

⁷ The out-of-state corporation owns or leases a place for company employees, directors, and officers.

⁸ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established if AL property > \$50,000.**

⁹ AZ: Protected if used for activities geared to solicitation such as training, etc.

¹⁰ AR: Answer based on the assumption that "place" is an office location.

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² CO: *Id.*

¹³ CO: *Id.*

¹⁴ CO: *Id.*

¹⁵ **FL: As long as the salesperson's only activity is the solicitation of sales of tangible personal property within Florida.**

¹⁶ GA: The salesperson would have to be otherwise protected under Public Law No. 86-272.

¹⁷ HI: If solely limited to conducting protected activities.

¹⁸ HI: *Id.*

¹⁹ HI: Unless protected under PL 86-272.

²⁰ HI: Tangible personal property is accepted by corporation's customers in Hawaii.

²¹ HI: *See Tax Information Release No. 95-3, "Immunity from Net Income Taxation Under Public Law 86-272."*

²² ID: If solely limited to the conducting of protected activities.

²³ ID: Unless used solely in carrying on protected activities in an "in-home" office.

²⁴ IL: *See Department Regulations Section 100.9720(c)(5)(D) and (E).*

State ¹	Co. cars for sales reps ²	Co. cars for employees ³	Owns/leases equipment ⁴	Holds title until contract price is paid ⁵	Files security interest ⁶	Owns place for staff ⁷
Kentucky	No	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	No	Yes	Yes	Yes	No	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes	Yes	Yes
Michigan ²⁵	Yes	Yes	Yes	Yes	No	Yes
Minnesota	Yes ²⁶	Yes	Yes	Yes	Yes	Yes
Mississippi	No	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes
Montana	No	Yes	Yes	Yes	Yes	Yes
Nebraska	No	Yes	Yes	Yes	Yes	Yes
New Hampshire	Depends	Yes	Yes	Yes	Yes	Yes
New Jersey	No	Yes	Yes	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York City	No Response	Yes	Yes	Yes	Yes	Yes
North Carolina	No	Yes	Yes	No	No	Yes
North Dakota	No	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	No	Yes
Oregon	No	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes ²⁷	Yes	Yes	Yes	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	No	Yes	Yes	Yes ²⁸	No	Yes²⁹
Tennessee	No ³⁰	Yes	Yes	No	No	Yes ³¹
Texas	Yes	Yes	Yes	Yes	No	Yes
Utah	No	Yes	Yes	Yes	Yes	Yes
Vermont ³²	No Response	Yes	Yes	Yes	Yes	Yes
Virginia	Yes ³³	Yes	Yes ³⁴	Yes	No	Yes ³⁵

²⁵ MI: For all questions in this survey that do not reference a number of days or times, e.g., “for fewer than 30 days per year” it is assumed that there is physical presence in Michigan 2 or more days.

²⁶ MN: Yes, except if the automobiles are used by salespersons solely in the solicitation of sales (P. L. 86-272 protection), then No.

²⁷ PA: Depends on facts and circumstances.

²⁸ SC: Assuming ownership has not passed and that holding title does not serve merely as a security interest.

²⁹ **SC: Assuming ownership or long term rental of real property in South Carolina.**

³⁰ TN: Answer assumes that the owner/lessee does not otherwise have tax nexus in Tennessee.

³¹ TN: Answer assumes that the place owned or leased is not merely a place of abode, such as a motel room, where no business is conducted.

³² VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³³ VA: Unless the salespersons’ activities are protected by Pub. L. No. 86-272.

³⁴ VA: See P.D. 97-180.

³⁵ VA: See P.D. 96-123 and P.D. 05-128 (providing that a taxpayer is not protected from taxation by a state pursuant to P.L. 86-272 if its employees and/or representatives maintain an office in the state).

State¹	Co. cars for sales reps²	Co. cars for employees³	Owns/leases equipment⁴	Holds title until contract price is paid⁵	Files security interest⁶	Owns place for staff⁷
West Virginia	No	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	Yes	Yes	Yes	Yes	Yes ³⁶

³⁶ WI: Nexus is created by the maintenance of any business location in Wisconsin, including any kind of office.

Nexus-Creating Activities: Ownership Interest of In-State Pass-Through Entities (Part 1 of 2)

State ¹	Investment LLC or partnership interest ²	General partnership interest ³	Limited partnership interest ⁴	Mgmt LLC interest ⁵	Non-mgmt LLC interest ⁶	Disregarded entity interest ⁷
Alabama ⁸	Yes	Yes	Yes	Yes	Yes	Yes
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona ⁹	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes ¹⁰	Yes	Yes ¹¹	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut ¹²	No	Yes	Yes ¹³	Yes	Yes ¹⁴	Yes
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	No ¹⁵	Yes ¹⁶	No ¹⁷	Yes ¹⁸	No ¹⁹	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No ²⁰	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes ²¹

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation owns an interest in an investment partnership or LLC that has operations in your state.

³ The out-of-state corporation owns a general interest in a partnership that is doing business in your state.

⁴ The out-of-state corporation owns a limited interest in a partnership that is doing business in your state.

⁵ The out-of-state corporation owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.

⁶ The out-of-state corporation owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.

⁷ The out-of-state corporation owns an interest in an entity located in your state that is disregarded for federal income tax purposes.

⁸ AL: The out-of-state owner's share of an In-State Pass-Through Entity's profit will be included and taxed as part of a mandatory composite return filed by the In-state Pass-Through Entity.

⁹ AZ: Creates nexus for reporting the partnership/LLC flow through. May or may not create nexus for the balance of the corporation's activities depending on if the partnership/LLC income is business or nonbusiness to the corporation.

¹⁰ CA: Generally, *but see Appeals of Amman & Schmid Finanz AG*, 96-SBE-008.

¹¹ CA: Generally, *but see Swart Enterprises, Inc. v. California Franchise Tax Board* (2014) Fresno Superior Court, No. 13CECG02171, Order on Cross-Motions for Summary Judgment.

¹² CT: *See Conn. Gen. Stat. § 12-214(a)(3)*.

¹³ **CT: A company that is a limited partner/non-managing member in a partnership/LLC that does business in state and that does no other business in state is not subject to tax on its distributive share of the partnership's/LLC's income and capital. See Conn. Gen. Stat. §§ 12-218(g)(1) and 12-219a(b)(1).**

¹⁴ **CT: *Id.***

¹⁵ DC: If a partner or LLC member performs services or receives a salary allowance then the answer is yes.

¹⁶ DC: Yes, if a general partner is envisioned in this question. If a partner or LLC member performs services or receives a salary allowance then the answer is yes.

¹⁷ DC: No - Unless receiving a salary allowance. If a partner or LLC member performs services or receives a salary allowance then the answer is yes.

¹⁸ DC: If a partner or LLC member performs services or receives a salary allowance then the answer is yes.

¹⁹ DC: *Id.*

²⁰ GA: Assuming the partnership and the corporation meets the requirements of the investment partnership exception in O.C.G.A. § 48-7-24(c).

²¹ HI: Based on the assumption the entity is a single member LLC.

State ¹	Investment LLC or partnership interest ²	General partnership interest ³	Limited partnership interest ⁴	Mgmt LLC interest ⁵	Non-mgmt LLC interest ⁶	Disregarded entity interest ⁷
Idaho ²²	Yes	Yes	Yes	Yes	Yes	Yes
Illinois	No Response ²³	Yes	Yes	Yes ²⁴	Yes ²⁵	Yes
Indiana	Yes ²⁶	Yes ²⁷	Yes ²⁸	Yes ²⁹	Yes ³⁰	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Depends	Yes	Depends	Depends
Michigan	Yes	Yes	Yes	Yes	Yes	Yes ³¹
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	No	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire ³²	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	No ³³	Yes	Yes ³⁴	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes³⁵	Yes³⁶	Yes³⁷	Yes³⁸	Yes³⁹	Yes
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes

²² ID: A corporation is considered transacting business within Idaho if it is a partner in a partnership that is transacting business within Idaho. See Idaho Income Tax Administrative Rule 620. See IDAPA 35.01.01.620. **There is a narrow exception for a “Qualified Investment Partnership.” See IDAPA 35.01.01.275.**

²³ IL: IITA Section 205(b) exempts an “investment partnership” from replacement income tax. Under IITA Section 305(c-5) the distributive share income of a nonresident partner of an investment partnership is generally deemed nonbusiness income and allocated to the partner’s state of residence or commercial domicile.

²⁴ IL: Yes, if the LLC has nexus.

²⁵ IL: *Id.*

²⁶ **IN: The activities would trigger a filing requirement; however, the activities by themselves do not bring in any of the corporation’s other activities.**

²⁷ **IN: *Id.***

²⁸ **IN: *Id.***

²⁹ **IN: *Id.***

³⁰ **IN: *Id.***

³¹ MI: The disregarded entity will be treated as a branch or division of its **owner**; therefore, the nexus-creating activities of the disregarded entity will be considered to be those of the corporation.

³² NH: NH does not recognize pass-through entities. All business organizations, including entities disregarded for federal taxation, are taxed pursuant to RSA chapter 77-A and RSA chapter 77-E.

³³ NJ: There could be nexus depending on whether the corporation meets the nexus standards of N.J.A.C. 18:7-7.6.

³⁴ NJ: Assumes the interest is not a passive investment.

³⁵ **NYC: Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.**

³⁶ **NYC: *Id.***

³⁷ **NYC: *Id.***

³⁸ **NYC: *Id.***

³⁹ **NYC: *Id.***

State ¹	Investment LLC or partnership interest ²	General partnership interest ³	Limited partnership interest ⁴	Mgmt LLC interest ⁵	Non-mgmt LLC interest ⁶	Disregarded entity interest ⁷
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes ⁴⁰
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes ⁴¹
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes ⁴²	Yes	Yes	Yes ⁴³	Yes ⁴⁴	Yes⁴⁵
Tennessee ⁴⁶	No ⁴⁷	Yes ⁴⁸	No ⁴⁹	No ⁵⁰	No ⁵¹	No ⁵²
Texas	Yes ⁵³	Yes	No	Yes	No	Yes ⁵⁴
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ⁵⁵	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	No⁵⁶	Yes	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes ⁵⁷

⁴⁰ ND: Assuming the LLC has nexus in the state.

⁴¹ OR: Assumes “located in your state” means “doing business in your state.”

⁴² SC: Although the income may not be taxed in SC. See SC Commission Decision #92-58 and SC Private Letter Ruling #95-2.

⁴³ SC: Assuming the LLC is taxed as a partnership or S corporation.

⁴⁴ SC: *Id.*

⁴⁵ **SC: *Id.***

⁴⁶ TN: Limited partnerships and LLCs doing business in Tennessee are subject to franchise, excise tax just the same as corporations doing business in Tennessee. The excise tax is based on net earnings.

⁴⁷ TN: Answer given assumes that the owner of the interest does not otherwise have tax nexus in Tennessee. The investment partnership or LLC is taxable in Tennessee. If the interest is in a general partnership or equivalent, then Tennessee nexus for the interest holder would result.

⁴⁸ TN: Assumes that the partnership is a general partnership.

⁴⁹ TN: The limited partnership would be taxed in Tennessee.

⁵⁰ TN: The LLC would be taxed in Tennessee.

⁵¹ TN: *Id.*

⁵² TN: Answer assumes that the entity that is disregarded for federal tax purposes is filing Tennessee franchise, excise tax returns and paying the taxes due. Otherwise, the entity with ownership in the disregarded entity would have Tennessee nexus.

⁵³ TX: Owning a general interest in a partnership that has operations in Texas creates nexus for Texas franchise tax. However, merely owning an interest in a limited liability company (LLC) that is doing business in Texas is not sufficient to subject the owning entity to Texas franchise tax.

⁵⁴ TX: Yes, if involved in managing or acts on behalf of the disregarded entity.

⁵⁵ VT: Vermont requires partnerships, LLCs and S corps to withhold tax from out-of-state partners and shareholders. **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.**

⁵⁶ VA: An ownership interest in an investment partnership that has operations in Virginia would not create nexus. See P.D. 05-69 (providing that investment pass-through entities established solely to invest in intangible personal property, such as stocks and bonds, and that have no employees, and no real or tangible personal property are not considered to be carrying on a trade or business. Accordingly, the income from the intangible property held by an investment pass-through entity is not income from Virginia sources). See also P.D. 15-240 (Guidelines for Pass-Through Entity Withholding, which further explain the impact to corporate owners of investment pass-through entities).

⁵⁷ WI: Provided the disregarded entity is doing business in Wisconsin.

Nexus-Creating Activities: Ownership Interest of In-State Pass-Through Entities (Part 2 of 2)

State ¹	Mgmt interest in entity that manages intangible investment assets ²	Limited interest in entity that manages intangible investment assets ³	Mgmt interest in entity that manages real property ⁴	Limited interest in entity that manages real property ⁵
Alabama ⁶	Yes	No	Yes	Yes
Alaska	Yes	Yes	Yes	Yes
Arizona ⁷	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes	Yes ⁸	Yes	Yes ⁹
Colorado	Yes	No	Yes	Yes
Connecticut ¹²	Yes	Depends ¹⁰	Yes	Yes ¹¹
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes ¹²	Yes	Yes
Florida	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes
Idaho ¹³	Yes	Yes	Yes	Yes
Illinois	Yes	Yes	Yes	Yes

¹ The questions in this chart are all appearing for the first time in 2017. As a result, none of the responses are in bold.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation owns a managing interest in an entity that limits its activities in your state to managing intangible investment assets that generate passive income.

³ The out-of-state corporation owns a limited interest in an entity that limits its activities in your state to managing intangible investment assets that generate passive income.

⁴ The out-of-state corporation owns a managing interest in an entity that limits its activities in your state to managing real property located in-state that generates passive income.

⁵ The out-of-state corporation owns a limited interest in an entity that limits its activities in your state to managing real property located in-state that generates passive income.

⁶ AL: The out-of-state owner's share of an In-State Pass-Through Entity's profit will be included and taxed as part of a mandatory composite return filed by the In-state Pass-Through Entity.

⁷ AZ: These situations create nexus for reporting the partnership/LLC flow through. May or may not create nexus for the balance of the corporation's activities depending on if the partnership/LLC income is business or nonbusiness to the corporation.

⁸ CA: Generally, but see *Swart Enterprises, Inc. v. California Franchise Tax Board* (2014) Fresno Superior Court, No. 13CECG02171, Order on Cross-Motions for Summary Judgment.

⁹ CA: *Id.*

¹² CT: See Conn. Gen. Stat. § 12-214(a)(3).

¹⁰ CT: A limited partnership interest in an "investment partnership" as defined in Conn. Gen. Stat. § 12-213(a)(27) does not create nexus. A company that is a limited partner/non-managing member in a partnership/LLC that does business in state and that does no other business in state is only subject to tax on its distributive share of the partnership's/LLC's income and capital. See Conn. Gen. Stat. §§ 12-218(g)(1) and 12-219a(b)(1).

¹¹ CT: A company that is a limited partner/non-managing member in a partnership/LLC that does business in state and that does no other business in state is only subject to tax on its distributive share of the partnership's/LLC's income and capital. See Conn. Gen. Stat. §§ 12-218(g)(1) and 12-219a(b)(1).

¹² DC: Yes if managing activities performed. No, if no activities is performed In District

¹³ ID: A corporation is considered transacting business within Idaho if it is a partner in a partnership that is transacting business within Idaho. See Idaho Income Tax Administrative Rule 620. See IDAPA 35.01.01.620. There is a narrow exception for a "Qualified Investment Partnership." See IDAPA 35.01.01.275.

State ¹	Mgmt interest in entity that manages intangible investment assets ²	Limited interest in entity that manages intangible investment assets ³	Mgmt interest in entity that manages real property ⁴	Limited interest in entity that manages real property ⁵
Indiana	No	No	Yes ¹⁴	Yes ¹⁵
Iowa	Yes	Yes	Yes	Yes
Kansas	No Response	No Response	No Response	No Response
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends
Michigan	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire ¹⁶	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes
New York City	Yes	No Response	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes ¹⁷	Yes ¹⁸	Yes	Yes
Oklahoma	No Response	No Response	No Response	No Response
Oregon	No Response	No Response	No Response	No Response
Pennsylvania	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	No Response	No Response	No Response	No Response
Tennessee ¹⁹	No	No	No	No
Texas	Yes ²⁰	No	Yes ²¹	No
Utah	Depends	Depends	Yes	Yes

¹⁴ IN: The activities would trigger a filing requirement; however, the activities by themselves do not bring in any of the corporation's other activities.

¹⁵ IN: *Id.*

¹⁶ NH: New Hampshire does not recognize pass-through entities. All business organizations, including entities disregarded for federal taxation, are taxed pursuant to RSA Chapter 77-A and RSA Chapter 77-E.

¹⁷ ND: Response assumes the passthrough entity has nexus in the state.

¹⁸ ND: *Id.*

¹⁹ TN: Answer assumes that the entity is filing Tennessee franchise, excise tax returns and paying the taxes due.

²⁰ TX: Owning a general interest in a partnership that has operations in Texas creates nexus for Texas franchise tax. However, merely owning an interest in a limited liability company (LLC) that is doing business in Texas is not sufficient to subject the owning entity to Texas franchise tax.

²¹ TX: *Id.*

State ¹	Mgmt interest in entity that manages intangible investment assets ²	Limited interest in entity that manages intangible investment assets ³	Mgmt interest in entity that manages real property ⁴	Limited interest in entity that manages real property ⁵
Vermont ²²	Yes	Yes	Yes	Yes
Virginia	Yes	No ²³	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes

²² VT: Vermont requires partnerships, LLCs and S corps to withhold tax from out-of-state partners and shareholders. All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.

²³ VA: An ownership interest in an investment partnership that has operations in Virginia would not create nexus. *See* P.D. 05-69 (providing that investment pass-through entities established solely to invest in intangible personal property, such as stocks and bonds, and that have no employees, and no real or tangible personal property are not considered to be carrying on a trade or business. Accordingly, the income from the intangible property held by an investment pass-through entity is not income from Virginia sources). *See also* P.D. 15-240 (Guidelines for Pass-Through Entity Withholding, which further explain the impact to corporate owners of investment pass-through entities).

Nexus-Creating Activities: Licensing Intangibles (Part 1 of 2)

State ¹	Licenses trademarks to related entities ²	Licenses trademarks to unrelated entities ³	Sells/licenses franchises ⁴	Licenses canned software ⁵
Alabama ⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Depends	Depends	Depends	Yes
Colorado	Yes ⁷	Yes ⁸	Yes ⁹	No ¹⁰
Connecticut ¹¹	Yes	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes
Georgia	No Response	No Response	No Response	No
Hawaii	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes
Illinois	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes ¹²
Kansas	Yes	Yes	Yes	No
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	No ¹³

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The corporation licenses trademarks or trade names to related entities with locations in your state.

³ The corporation licenses trademarks or trade names to unrelated entities with locations in your state.

⁴ The corporation sells/licenses franchises (such as fast-food franchises) to residents of your state.

⁵ The corporation licenses canned software to consumers in your state.

⁶ **AL: Nexus is determined by factor presence nexus and AL sources intangible income based on where the intangible asset is used. Nexus is established if sales > \$500,000.**

⁷ CO: If meets nexus dollar or percentage threshold.

⁸ CO: *Id.*

⁹ CO: *Id.*

¹⁰ CO: Unless the licensing is less than a sale.

¹¹ CT: To the extent that these answers relate to economic nexus, bright-line test for receipts must be met. See IP 2010(29.1), Q&A on Economic Nexus.

¹² IA: Economic nexus standard is applied. This is supported by the Iowa Supreme Court decision in KFC Corporation that was issued on Dec. 30, 2010.

¹³ **ME: Depends on facts and circumstances.**

State ¹	Licenses trademarks to related entities ²	Licenses trademarks to unrelated entities ³	Sells/licenses franchises ⁴	Licenses canned software ⁵
Maryland	Yes	No	Yes	Yes
Massachusetts	Yes	Depends ¹⁴	Depends ¹⁵	Depends ¹⁶
Michigan	No	No	No	No
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	No ¹⁷
New Mexico	Yes	Yes	Yes	Yes
New York City¹⁸	No	No	No	No Response
North Carolina	Yes	Yes	Yes	Yes ¹⁹
North Dakota	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	No
Oregon	Yes	Yes	Yes	No ²⁰
Pennsylvania	No	No	No	No
Rhode Island	Yes	Yes	Yes	Yes
South Carolina ²¹	Yes	Yes	Yes ²²	Yes
Tennessee ²³	No ²⁴	No	No ²⁵	No
Texas	No	No	Yes	No
Utah	Yes	Yes	Yes	Yes

¹⁴ MA: See G.L. c. 63, s. 38(f).

¹⁵ MA: *Id.*

¹⁶ MA: *Id.*

¹⁷ NJ: *Quark, Inc. v. Director, Division of Taxation*, N.J. Tax Court Docket No. 004692-2002 (Aug. 13, 2009); *AccuZIP, Inc. v. Director, Division of Taxation*, N.J. Tax Court Docket No. 005744-2003 (Aug. 13, 2009).

¹⁸ **NYC: Entities dealing with affiliates in New York City may be subject to combination even if nexus is lacking if dealings result in distortion. See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.**

¹⁹ NC: Depends on the licensing agreement between the parties.

²⁰ OR: Canned software is considered by Oregon to be tangible personal property.

²¹ **SC: See *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).**

²² SC: Assuming this does not mean the sale of an entire business, e.g., not an outright sale of a restaurant and not a sale of all of franchisor's interest in the franchise.

²³ TN: Answers assume the licensor corporation's total receipts do not exceed \$500,000 or 25% of its total receipts everywhere. See Tenn. Code Ann. § 67-4-2004(49(A)).

²⁴ TN: The licensee in Tennessee, if affiliated with the licensor, must comply with the disclosure requirements of Tenn. Code Ann. § 67-4-2006(d) by disclosing its intangible expenses on its franchise, excise tax return. If no such disclosure is made, or the transfer and license back transactions between the Tennessee licensee and the affiliated licensor have no practical economic effect other than the creation of tax benefits and tax avoidance is the clear motivating factor or the only business purpose of the licensor, then the licensee will not be permitted to deduct the intangible expenses paid to its affiliate(s).

²⁵ TN: However, the franchisor's relationship with the Tennessee resident would most likely involve other transactions that would create nexus for the franchisor.

State ¹	Licenses trademarks to related entities ²	Licenses trademarks to unrelated entities ³	Sells/licenses franchises ⁴	Licenses canned software ⁵
Vermont ²⁶	Yes	Yes	Yes	Yes
Virginia	No ²⁷	No ²⁸	No ²⁹	No
West Virginia ³⁰	No	No	No	No
Wisconsin	Yes	Yes	Yes	Yes

²⁶ VT: All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.

²⁷ VA: See P.D. 10-279.

²⁸ VA: *Id.*

²⁹ VA: See P.D. 88-58 and P.D. 07-121. Note, however, that franchise agreements may include inspections, operating manuals, and other tangible property which could create nexus.

³⁰ WV: The West Virginia Supreme Court of Appeals held in *Griffith v. ConAgra Brands, Inc.*, 229 W. Va. 190, 728 S.E.2d 74 (2012) “that assessments against a foreign licensor for West Virginia corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither ‘purposeful direction’ under the Due Process Clause nor ‘significant economic presence’ under the Commerce Clause, where the foreign licensor, with no physical presence in this State, did not sell or distribute food-related products or provide services in West Virginia and where: (1) all products bearing the trademarks and trade names were manufactured solely by unrelated or affiliated licensees of the foreign licensor outside of West Virginia, (2) the foreign licensor did not direct or dictate how its licensees distributed the products and (3) the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in this State.”

Nexus-Creating Activities: Licensing Intangibles (Part 2 of 2)

State ¹	Management fee from related party ²	Management fee from unrelated party ³	Licenses webinar to in-state consumer ⁴	Sells/licenses patent to related entity ⁵	Sells/licenses patent to unrelated entity ⁶	Sells/rents customer lists to unrelated entities ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	No	Yes	Yes	Yes
California	Depends	Depends	Yes	Yes	Yes	Depends
Colorado	Yes ⁹	Yes ¹⁰	No	Yes ¹¹	Yes ¹²	Yes ¹³
Connecticut ¹⁴	No	Depends	Depends	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No Response	No Response	Depends ¹⁵	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho ¹⁶	Depends	Depends	Depends	Depends	Depends	Depends
Illinois	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	No	No	Yes	Yes	Yes	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	No	No	No	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The corporation receives a management fee from a related entity with a location in your state.

³ The corporation receives a management fee from an unrelated entity with a location in your state.

⁴ The corporation licenses to an in-state consumer permission to use its website for a webinar.

⁵ The corporation sells/licenses the right to use a patent or copyright to related entities with locations in your state.

⁶ The corporation sells/licenses the right to use a patent or copyright to unrelated entities with locations in your state.

⁷ The corporation sells/rents customer lists to unrelated entities in your state.

⁸ **AL: Nexus is determined by factor presence nexus and AL sources intangible income based on where the intangible asset is used. Nexus is established if sales > \$500,000.**

⁹ CO: If meets nexus dollar or percentage threshold.

¹⁰ CO: *Id.*

¹¹ CO: If meets nexus dollar or percentage threshold and if the sale is sourced to the state.

¹² CO: *Id.*

¹³ CO: If meets nexus dollar or percentage threshold.

¹⁴ CT: To the extent that these answers relate to economic nexus, bright-line test for receipts must be met. See IP 2010(29.1), Q&A on Economic Nexus.

¹⁵ GA: Depends, if server is in Georgia.

¹⁶ ID: Depends on the extent of services provided in the state or use of assets in the state and other activity of the corporation.

State ¹	Management fee from related party ²	Management fee from unrelated party ³	Licenses webinar to in-state consumer ⁴	Sells/licenses patent to related entity ⁵	Sells/licenses patent to unrelated entity ⁶	Sells/rents customer lists to unrelated entities ⁷
Kentucky	No ¹⁷	No ¹⁸	Yes ¹⁹	Yes ²⁰	Yes ²¹	Yes ²²
Louisiana	Yes	No ²³	No	Yes	Yes	Yes
Maine	No	No	No	Yes	Yes	No
Maryland	Yes	No	No	Yes	No	No
Massachusetts ²⁴	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	No	No	No ²⁵	No	No	No
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Yes	Yes	Yes	Depends
Nebraska	Yes	Yes	No Response	Yes	Yes	Yes ²⁶
New Hampshire	Yes	Yes	Depends	Yes	Yes	Depends
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No	No	No	No²⁷	No	No
North Carolina	Yes ²⁸	Yes ²⁹	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	No	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	No	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina ³⁰	No Response	No Response	No Response	Yes	Yes	No Response

¹⁷ KY: If the management services are performed in Kentucky in whole or in part, the answer would be yes.

¹⁸ KY: *Id.*

¹⁹ KY: When intangible property acquires a Kentucky business situs, income from the property falls under the definition of doing business.

²⁰ KY: *Id.*

²¹ KY: *Id.*

²² KY: *Id.*

²³ LA: No, only if the management company does not send any representatives to Louisiana to facilitate the management services.

²⁴ MA: *See* G.L. c. 63, s. 38(f).

²⁵ MI: The corporation may have nexus if the website constitutes prewritten software located on a server in Michigan.

²⁶ NE: In Nebraska, customer lists are TPP and as such, if sold, the activity may be protected by PL 86-272.

²⁷ **NYC: Entities dealing with affiliates in New York City may be subject to combination even if nexus is lacking if dealings result in distortion. See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.**

²⁸ NC: Depends on where the management services are provided.

²⁹ NC: *Id.*

³⁰ **SC: See *Geoffrey, Inc. v. South Carolina Tax Commission*, 437 S.E.2d 13 (S.C. 1993).**

State ¹	Management fee from related party ²	Management fee from unrelated party ³	Licenses webinar to in-state consumer ⁴	Sells/licenses patent to related entity ⁵	Sells/licenses patent to unrelated entity ⁶	Sells/rents customer lists to unrelated entities ⁷
Tennessee ³¹	No	No	No	No	No	No
Texas	No Response ³²	No Response ³³	No	No ³⁴	No ³⁵	No
Utah	Depends ³⁶	Depends ³⁷	Yes	Yes	Yes	Yes
Vermont ³⁸	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	Yes ³⁹	Yes ⁴⁰	No ⁴¹	No ⁴²	No ⁴³	No
West Virginia	No ⁴⁴	No ⁴⁵	Yes ⁴⁶	No ⁴⁷	No ⁴⁸	Yes ⁴⁹
Wisconsin	Depends	Depends	Yes	Yes	Yes	Depends

³¹ TN: Answers assume the licensor corporation's total receipts do not exceed \$500,000 or 25% of its total receipts everywhere. See Tenn. Code Ann. §67-4-2004(49)(A).

³² TX: Yes, if the entity sends an employee or representative into Texas to perform any service per Rule 3.586(c)(8).

³³ TX: *Id.*

³⁴ TX: A franchisor entering into specified contracts with franchisees located in Texas per Rule 3.586(c)(7) has nexus in Texas.

³⁵ TX: *Id.*

³⁶ UT: Need more information to make a determination. For example, does the management arise from a service provided in Utah?

³⁷ UT: *Id.*

³⁸ **VT: All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.**

³⁹ VA: Assumes that management activities require visits to, or other activity at, the Virginia locations.

⁴⁰ VA: *Id.*

⁴¹ VA: See P.D. 00-53.

⁴² VA: See P.D. 03-37.

⁴³ VA: See P.D. 93-157.

⁴⁴ WV: The West Virginia Supreme Court of Appeals held in *Griffith v. ConAgra Brands, Inc.*, 229 W. Va. 190, 728 S.E.2d 74 (2012) "that assessments against a foreign licensor for West Virginia corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither 'purposeful direction' under the Due Process Clause nor 'significant economic presence' under the Commerce Clause, where the foreign licensor, with no physical presence in this State, did not sell or distribute food-related products or provide services in West Virginia and where: (1) all products bearing the trademarks and trade names were manufactured solely by unrelated or affiliated licensees of the foreign licensor outside of West Virginia, (2) the foreign licensor did not direct or dictate how its licensees distributed the products and (3) the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in this State."

⁴⁵ WV: *Id.*

⁴⁶ WV: The actions of the foreign corporation are indicative of the "significant economic presence," determined by the Court in *Tax Comm'r v. MBNA America Bank*, to be "a better indicator of whether substantial nexus exists for Commerce Clause purposes." See *Tax Comm'r v. MBNA America Bank*, 220 W.Va. 163, 640 S.E.2d 226 (2006), cert. denied, 551 U.S. 1141, 127 S.Ct. 2997, 168 L.Ed.2d 719 (2007).

⁴⁷ WV: The West Virginia Supreme Court of Appeals held in *Griffith v. ConAgra Brands, Inc.*, 229 W. Va. 190, 728 S.E.2d 74 (2012) "that assessments against a foreign licensor for West Virginia corporation net income and business franchise tax, on royalties earned from the nation-wide licensing of food industry trademarks and trade names, satisfied neither 'purposeful direction' under the Due Process Clause nor 'significant economic presence' under the Commerce Clause, where the foreign licensor, with no physical presence in this State, did not sell or distribute food-related products or provide services in West Virginia and where: (1) all products bearing the trademarks and trade names were manufactured solely by unrelated or affiliated licensees of the foreign licensor outside of West Virginia, (2) the foreign licensor did not direct or dictate how its licensees distributed the products and (3) the licensees, operating no retail stores in West Virginia, sold the products only to wholesalers and retailers in this State."

⁴⁸ WV: *Id.*

⁴⁹ WV: The actions of the foreign corporation are indicative of the "significant economic presence," determined by the Court in *Tax Comm'r v. MBNA America Bank*, to be "a better indicator of whether substantial nexus exists for Commerce Clause purposes." See *Tax Comm'r v. MBNA America Bank*, 220 W.Va. 163, 640 S.E.2d 226 (2006), cert. denied, 551 U.S. 1141, 127 S.Ct. 2997, 168 L.Ed.2d 719 (2007).

Nexus-Creating Activities: Employee Activities — Sales Related (Part 1 of 2)

State ¹	Accept orders ²	Negotiate prices ³	Check credit ⁴	Accept deposits ⁵	Handle credit disputes ⁶	Attend trade shows one to 14 days ⁷	Maintain free samples ⁸
Alabama ⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	Yes	Yes	No	No
Arkansas	Yes	No	Yes	Yes	Yes	No	No
California	Yes	Yes	Yes	Yes	Yes	No Response ¹⁰	Yes
Colorado	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴	Yes ¹⁵	No ¹⁶	No
Connecticut	Yes	Depends	Yes	Depends	Yes	No Response ¹⁷	Depends
Delaware	Yes	No	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	No	Yes	Yes	Yes	No ¹⁸	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes ¹⁹	No ²⁰
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Depends ²¹
Hawaii	Yes	Yes	Yes	Yes	Yes	No	No
Idaho	Yes	Yes	Yes	Yes	Yes	No	No ²²
Illinois	Yes	Yes	Yes	Yes	Yes	No Response ²³	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	No	Yes	Yes	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees of an out-of-state corporation, while in your state, accept and approve customer orders.

³ Employees of an out-of-state corporation, while in your state, negotiate prices, subject to approval outside your state.

⁴ Employees of an out-of-state corporation, while in your state, investigate credit worthiness of customers.

⁵ Employees of an out-of-state corporation, while in your state, secure or accept deposits on sales.

⁶ Employees of an out-of-state corporation, while in your state, handle credit disputes.

⁷ Employees of an out-of-state corporation, while in your state, attend trade shows or maintain sample/display rooms for one to 14 days per year.

⁸ Employees of an out-of-state corporation, while in your state, maintain a two-month supply of free samples.

⁹ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established if payroll if compensation > \$50,000 or sales >\$500,000.**

¹⁰ CA: See doing business exclusion of RTC §23104, FTB Publication 1050.

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² CO: *Id.*

¹³ CO: *Id.*

¹⁴ CO: *Id.*

¹⁵ CO: *Id.*

¹⁶ CO: Payroll of employee in state for trade show does not count towards nexus payroll calculation.

¹⁷ CT: See Conn. Gen. Stat. § 12-213(a)(20)(C).

¹⁸ DC: Yes, if conducting a trade show, no if just attending.

¹⁹ FL: Depends on facts and circumstances.

²⁰ FL: If protected by Public Law 86-272.

²¹ GA: The salesperson would otherwise have to be protected under Public Law 86-272.

²² ID: Assuming the free samples relate to soliciting.

²³ IL: Insufficient information is provided to answer the question.

State ¹	Accept orders ²	Negotiate prices ³	Check credit ⁴	Accept deposits ⁵	Handle credit disputes ⁶	Attend trade shows one to 14 days ⁷	Maintain free samples ⁸
Kansas	Yes	Yes	Yes	Yes	Yes	No	No
Kentucky	Yes	Yes	Yes	Yes	Yes	No	No
Louisiana	Yes	No	Yes	Yes	Yes	No	No
Maine	Yes	Depends	Yes	Yes	Yes	No	No
Maryland	Yes	No	Yes	Yes	Yes	No	No
Massachusetts	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	Yes ²⁸	Yes ²⁹	No ³⁰
Minnesota	Yes	Yes	Yes	Yes	Yes	No	No
Mississippi	Yes	Yes	Yes	Yes	Yes	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	No	No
Montana	Yes	Yes	Yes	Yes	Yes	No	No
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes ³¹	No
New Hampshire	Yes	Yes	Yes	Yes	Yes	Depends	Depends
New Jersey	Yes	No	Yes	Yes	Yes	No	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	No	Yes	Yes	Yes	No³²	No
North Carolina	Yes	No	Yes	Yes	Yes	No	No
North Dakota	Yes	No	Yes	Yes	Yes	No	No
Oklahoma	Yes	Yes	Yes	Yes	Yes	No	Yes
Oregon	Yes	No	Yes	Yes	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	No	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	No	Yes	Yes	Yes	No	No
Tennessee	Yes	No ³³	Yes	Yes	Yes	No ³⁴	No
Texas	Yes	Yes	Yes	Yes	Yes	Yes ³⁵	Yes
Utah	Yes	Yes	Yes	Yes	Yes	No	No

²⁴ MI: If physically present in Michigan 2 or more days.

²⁵ MI: *Id.*

²⁶ MI: *Id.*

²⁷ MI: *Id.*

²⁸ MI: *Id.*

²⁹ MI: *Id.*

³⁰ MI: Only if samples are for display or distribution without charge.

³¹ NE: Assuming sales were made.

³² **NYC: We recently adopted rules N.Y.C. Regs. §§ 11-03 and -04 allowing corporations to participate in one or more trade shows in the City for up to 14 days in the aggregate without being subject to tax if they do not otherwise have nexus to the City. For unanswered questions See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002.**

³³ TN: Answer given assumes no other in-state activity beyond that allowed by P.L. 86-272.

³⁴ TN: *Id.*

³⁵ TX: There is an exception for certain trade show participants per Texas Tax Code Section 171.084 that is limited to the solicitation of orders at certain types of trade shows and on an occasional basis as defined in the statute.

State ¹	Accept orders ²	Negotiate prices ³	Check credit ⁴	Accept deposits ⁵	Handle credit disputes ⁶	Attend trade shows one to 14 days ⁷	Maintain free samples ⁸
Vermont ³⁶	Yes	No	Yes	Yes	Yes	No ³⁷	No ³⁸
Virginia	Yes ³⁹	No	Yes ⁴⁰	Yes	Yes ⁴¹	No	No ⁴²
West Virginia	Yes	No	Yes	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes ⁴³	No

³⁶ VT: All nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³⁷ VT: *Id.*

³⁸ VT: *Id.*

³⁹ VA: See P.D. 05-128 (providing that a taxpayer is not protected from taxation by a state pursuant to P.L. 86-272 if its employees and/or representatives accept sales orders).

⁴⁰ VA: See P.D. 08-139.

⁴¹ VA: See P.D. 92-150.

⁴² VA: See P.D. 94-111.

⁴³ WI: Merely attending a trade show as a visitor would not create nexus.

Nexus-Creating Activities: Employee Activities — Sales Related (Part 2 of 2)

State ¹	Check customers' inventories ²	Make one de minimis sale ³	Make one non de minimis sale ⁴	Solicit service sales one to 6 days ⁵	In-home office ⁶	Operate mobile stores ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	Yes	Yes	No	Yes
Arkansas	No	No	Yes	Yes	No	Yes
California	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	No	No	Yes ⁹	Yes ¹⁰	No ¹¹	Yes ¹²
Connecticut	Depends	Depends	Depends	Depends	Yes	Yes
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	No	No	Yes	No	Yes	Yes
Florida	No	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Depends ¹³	Yes	Yes	Depends ¹⁴	Yes
Hawaii	No Response ¹⁵	Yes	Yes	No	No Response ¹⁶	Yes
Idaho	No ¹⁷	Yes	Yes	Yes	No ¹⁸	Yes
Illinois	No Response ¹⁹	No	Yes	Yes	No	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees, while in your state, check customers' inventories for reorder.

³ An employee, while in your state, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was de minimis).

⁴ An employee, while in your state, makes a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was not de minimis).

⁵ Employees, while in your state, solicit sales of services in your state one to six days per year.

⁶ Employees, while in your state, perform a sales-related function and are reimbursed for the costs of maintaining an in-home office.

⁷ Employees, while in your state, operate mobile stores.

⁸ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established if payroll if compensation > \$50,000 or sales > \$500,000.**

⁹ CO: If meets nexus dollar or percentage threshold.

¹⁰ CO: *Id.*

¹¹ CO: Assuming salesperson only conducts protected activities.

¹² CO: If meets nexus dollar or percentage threshold.

¹³ GA: Assumes sale was de minimis in dollar amount. The salesperson would otherwise have to be protected under Public Law 86-272.

¹⁴ GA: Assuming no non-solicitation activities are performed. The salesperson would otherwise have to be protected under Public Law 86-272.

¹⁵ HI: Activity as described in paragraph IV.B.9 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law No. 86-272.

¹⁶ HI: Costs are described in paragraph IV.B.13 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law No. 86-272.

¹⁷ ID: Assuming this is done without compensation.

¹⁸ ID: Depends on whether the office is publicly attributed to the company or to the salesperson as an employee or representative of the company and the activity from the office is limited to certain protected activities.

¹⁹ IL: Insufficient information is provided to answer the question.

State ¹	Check customers' inventories ²	Make one de minimis sale ³	Make one non de minimis sale ⁴	Solicit service sales one to 6 days ⁵	In-home office ⁶	Operate mobile stores ⁷
Iowa	No	No	Yes	Yes	Yes	Yes
Kansas	No	Yes	Yes	Yes	No	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	No	No	Yes	Yes	No	Yes
Maine	No	No	Yes	Yes	No	Yes
Maryland	No	Yes	Yes	Yes	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	No ²⁰	Yes ²¹	Yes ²²	Yes ²³	Yes ²⁴	Yes ²⁵
Minnesota	No	No	Yes	Yes	No Response ²⁶	Yes
Mississippi	No	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes
Montana	No	Yes	Yes	Yes	No	Yes
Nebraska	Yes	No	Yes	Yes	No	Yes
New Hampshire	Depends	Yes	Yes	Yes	Yes	Yes
New Jersey	No	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	No	Yes	Yes	Yes	Yes
New York City	Yes	No	Yes	Yes	Yes	Yes
North Carolina	No	Yes	Yes	Yes	No	Yes
North Dakota	Yes	No ²⁷	Yes	Yes	No ²⁸	Yes
Oklahoma	Yes	No	No	No	Yes	Yes
Oregon	No	No	Yes	Yes	No	Yes
Pennsylvania	No	Yes	Yes	Yes	No	No
Rhode Island	Yes	No	No	Yes	Yes	Yes
South Carolina	No	No Response	No Response	Yes	Yes	Yes
Tennessee	No	No	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes ²⁹
Utah	No	No	Yes	Yes	No	Yes

²⁰ MI: Only if done without charge.

²¹ MI: If physically present in Michigan 2 or more days.

²² MI: *Id.*

²³ MI: *Id.*

²⁴ MI: *Id.*

²⁵ MI: *Id.*

²⁶ MN: Minnesota's statutes explicitly recognize Public Law 86-272.

²⁷ **ND: While North Dakota does not have a general de minimis standard, the response assumes the de minimis sale would not result in meeting the Constitutional standard for "substantial nexus."**

²⁸ ND: Assuming the "sales-related" function is an activity protected by PL 86-272.

²⁹ TX: Yes, if mobile stores physically come into Texas to conduct business.

State ¹	Check customers' inventories ²	Make one de minimis sale ³	Make one non de minimis sale ⁴	Solicit service sales one to 6 days ⁵	In-home office ⁶	Operate mobile stores ⁷
Vermont ³⁰	No	No Response	No Response	Yes	Yes	Yes
Virginia	No ³¹	No	Yes	No	Yes	Yes ³²
West Virginia	No	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	No	No	Yes	No	Yes

³⁰ VT: All nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³¹ VA: See P.D. 94-111.

³² VA: The Department's long-standing policy is that the presence of any inventory in Virginia subjects a corporation to income tax. See, e.g., P.D. 88-146, P.D. 97-447, and P.D. 02-132.

Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 1 of 4)

State ¹	Collect delinquent accounts ²	Repossess property ³	Perform repair services regularly ⁴	Perform repair services one to 4 times ⁵	Set up product displays ⁶	Supervise or inspect installation ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	No	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	Yes ⁹	Yes ¹⁰	Yes ¹¹	Yes ¹²	No	Yes ¹³
Connecticut	Yes	Yes	Yes	Depends	Depends	Yes
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹⁴	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes
Illinois	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	No	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees of an out-of-state corporation, while in your state, collect delinquent accounts.

³ Employees of an out-of-state corporation, while in your state, repossess property.

⁴ Employees of an out-of-state corporation, while in your state, regularly perform installation, repair, maintenance, or warranty services.

⁵ Employees of an out-of-state corporation, while in your state, perform installation, repair, or warranty services one to four times per year.

⁶ Employees of an out-of-state corporation, while in your state, set up promotional display of products (e.g., end caps, etc.) and inspect inventory.

⁷ Employees of an out-of-state corporation, while in your state, supervise or inspect installation.

⁸ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established by payroll > \$50,000.**

⁹ CO: If meets nexus dollar or percentage threshold.

¹⁰ CO: *Id.*

¹¹ CO: *Id.*

¹² CO: *Id.*

¹³ CO: *Id.*

¹⁴ **FL: It depends on the facts and circumstances.**

State ¹	Collect delinquent accounts ²	Repossess property ³	Perform repair services regularly ⁴	Perform repair services one to 4 times ⁵	Set up product displays ⁶	Supervise or inspect installation ⁷
Maryland	Yes	Yes	Yes	Yes	Yes	Yes ¹⁵
Massachusetts	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	Yes ¹⁶	Yes ¹⁷	Yes	Yes ¹⁸	Yes ¹⁹	Yes ²⁰
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	Yes	No Response²¹	Yes
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota ²²	Yes	Yes	Yes	Yes	No ²³	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Yes ²⁴	No Response ²⁵	Yes
Tennessee	Yes	Yes	Yes	Yes	No ²⁶	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ²⁷	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	Yes ²⁸	Yes ²⁹	Yes ³⁰	Yes ³¹	Yes ³²	Yes
West Virginia	Yes	Yes	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes

¹⁵ MD: If not associated with solicitation and a protected activity.

¹⁶ MI: If physically present in Michigan for more than 2 days.

¹⁷ MI: *Id.*

¹⁸ MI: *Id.*

¹⁹ MI: *Id.*

²⁰ MI: *Id.*

²¹ **NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002.**

²² ND: Assumption is the employee is a "sales" employee (performing non-sales related activities).

²³ ND: As long as there is no charge.

²⁴ SC: Unless de minimis.

²⁵ SC: The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.

²⁶ TN: Answer given assumes that there is no charge or other required consideration for setting up the displays or inventory inspections and that inventory inspections are for reorder purposes only and not for quality control or some other purpose.

²⁷ VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

²⁸ VA: See P.D. 92-177 and P.D. 99-174.

²⁹ VA: See P.D. 99-174.

³⁰ VA: See P.D. 00-61.

³¹ VA: *Id.*

³² VA: See P.D. 88-146.

Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 2 of 4)

State ¹	Conduct training courses 2 times per year ²	Provide design functions ³	Handle customer complaints ⁴	Pick up defective merchandise ⁵	Pick up or replace merchandise ⁶	Provide shipping information ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes ⁹	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes	Yes
Colorado	Yes ¹⁰	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴	No
Connecticut	Depends	Yes	Yes	Yes	Yes	Depends
Delaware	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹⁵	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	No Response ¹⁶
Idaho	Yes ¹⁷	Yes	Yes	Yes	Yes	Yes ¹⁸
Illinois	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	No ¹⁹	Yes	Yes	Yes	Yes	No
Kansas	Yes	Yes	Yes	Yes	Yes	No
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees of an out-of-state corporation, while in your state, conduct training courses, seminars or lectures two times per year.

³ Employees of an out-of-state corporation, while in your state, provide engineering or design functions related to customized products.

⁴ Employees of an out-of-state corporation, while in your state, handle customer complaints.

⁵ Employees of an out-of-state corporation, while in your state, pick up defective merchandise.

⁶ Employees of an out-of-state corporation, while in your state, pick up or replace damaged or returned property.

⁷ Employees of an out-of-state corporation, while in your state, provide shipping information and coordinate deliveries.

⁸ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established by payroll > \$50,000.**

⁹ AR: If training is sales related, no nexus is created, but, if training is not sales related, nexus may be created.

¹⁰ CO: If meets nexus dollar or percentage threshold.

¹¹ CO: *Id.*

¹² CO: *Id.*

¹³ CO: *Id.*

¹⁴ CO: *Id.*

¹⁵ **FL: It depends on the facts and circumstances.**

¹⁶ HI: Activity as described in paragraph IV.B.8 of the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law No. 86-272.

¹⁷ ID: Unless solely for personnel involved only in solicitation.

¹⁸ ID: Assumes receiving compensation.

¹⁹ IA: Training activities exempt due to Iowa Code section 422.34A(7).

State ¹	Conduct training courses 2 times per year ²	Provide design functions ³	Handle customer complaints ⁴	Pick up defective merchandise ⁵	Pick up or replace merchandise ⁶	Provide shipping information ⁷
Louisiana	Yes	Yes	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes	Yes	No
Maryland	Yes	Yes	Yes	Yes	Yes	No
Massachusetts	Depends	Yes	Yes	Yes	Yes	Yes
Michigan	Yes	Yes ²⁰	Yes ²¹	Yes ²²	Yes ²³	No ²⁴
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes	No ²⁵
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No	Yes	Yes	Yes	Yes	No
North Carolina	Yes	Yes	Yes	Yes	Yes	No
North Dakota ²⁶	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes ²⁷	Yes	Yes ²⁸	Yes	Yes	No
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	No
Vermont ²⁹	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	Yes	Yes	Yes ³⁰	Yes	Yes	Yes ³¹
West Virginia	Yes	Yes	Yes	Yes	Yes	No
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes

²⁰ MI: If physically present in Michigan for more than 2 days.

²¹ MI: *Id.*

²² MI: *Id.*

²³ MI: *Id.*

²⁴ MI: Only if the activity is conducted without payment or other consideration.

²⁵ **MT: Assumes coordinating shipment or delivery without payment or other consideration.**

²⁶ ND: Assumption is the employee is a "sales" employee (performing non-sales related activities).

²⁷ SC: Unless sales training.

²⁸ SC: Facilitating communication between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer, however, is a protected activity. See S.C. Rev. Rul. #97-15.

²⁹ VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³⁰ VA: See P.D. 92-150.

³¹ VA: See P.D. 92-125.

Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 3 of 4)

State ¹	One to 6 employees telecommuting from home doing non-solicitation activities ²	One employee telecommuting from home doing back office functions ³	One employee telecommuting from home doing product development functions ⁴	Assist legal counsel ⁵	Purchase raw materials ⁶	Attend seminars ⁷	Attend meetings one to 14 days ⁸
Alabama ⁹	Yes ¹⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes ¹¹	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes ¹²	Yes	Yes	No	No	No	No
Arkansas	Yes ¹³	Yes	Yes	Yes	Yes	No	No
California	Yes	Yes ¹⁴	Yes ¹⁵	Yes	Yes	Depends ¹⁶	Depends ¹⁷
Colorado	Yes ¹⁸	Yes ¹⁹	Yes ²⁰	No	Yes ²¹	No	No
Connecticut	Depends	Depends	Depends	Depends	Depends	Depends	No Response ²²
Delaware	Yes	Yes	Yes	Yes	Yes	No	Yes

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NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees of an out-of-state corporation, while in your state, telecommute from their homes located in your state (assume that there are one to six such employees in your state and all of these employees perform non-solicitation activities).

³ At least one employee telecommutes from a home located in your state and performs back office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.

⁴ At least one employee telecommutes from a home located in your state and performs product development functions, such as computer coding.

⁵ Employees of an out-of-state corporation, while in your state, assist the corporation defend a lawsuit (e.g., legal staff and witnesses) while in your state for one to 30 days.

⁶ Employees of an out-of-state corporation, while in your state, purchase raw materials and inventory while in your state for 20 or fewer days.

⁷ Employees of an out-of-state corporation, while in your state, attend seminars.

⁸ Employees of an out-of-state corporation, while in your state, attend an annual training seminar, convention, trade show, retreat, or board of directors' meeting for one to 14 consecutive days each year (assume that during their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone or fax machines in your state).

⁹ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established by payroll > \$50,000.**

¹⁰ AL: If greater than \$50,000.

¹¹ AK: No, Alaska does not have a de minimis standard and, therefore, the company would have nexus.

¹² AZ: Answer would be the same [if the corporation made no sales in Arizona or if the employees telecommuted for only part of their total work time.]

¹³ AR: The answer does not change [if the out-of-state corporation made no sales in the state, or if the employees telecommute for only part of their total work time.]

¹⁴ CA: The answer would not change if the out-of-state corporation made no sales into California, or if the employees telecommute for only part of their total work time because the employees perform non-solicitation activities, and therefore, the activities do not qualify for Public Law 86-272 protection. Also, the number of employees performing the activities is not relevant.

¹⁵ CA: *Id.*

¹⁶ CA: Doing Business exclusion of RTC §23104 may apply. CCR §23101.5(c) might apply.

¹⁷ CA: *Id.*

¹⁸ CO: If meets nexus dollar or percentage threshold. Conclusion same regardless of whether corporation made sales in state or whether employee telecommutes **part of the time so long as the threshold is met.**

¹⁹ CO: If meets nexus dollar or percentage threshold.

²⁰ CO: *Id.*

²¹ CO: *Id.*

²² CT: See Conn. Gen. Stat. §12-213(a)(20)(C).

State ¹	One to 6 employees telecommuting from home doing non-solicitation activities ²	One employee telecommuting from home doing back office functions ³	One employee telecommuting from home doing product development functions ⁴	Assist legal counsel ⁵	Purchase raw materials ⁶	Attend seminars ⁷	Attend meetings one to 14 days ⁸
District of Columbia	Yes	Yes	Yes	No	No	No	No ²³
Florida ²⁴	Yes ²⁵	Yes	Yes	Yes	Yes	No	Yes
Georgia	Yes ²⁶	Yes	Yes	Yes	Yes	Depends	Depends
Hawaii	Yes	Yes	Yes	Depends	No	No	Depends
Idaho	Yes ²⁷	Yes	Yes	Yes	Yes	No ²⁸	No ²⁹
Illinois	Yes ³⁰	Yes	Yes	Yes	Yes	Yes	No
Indiana	No	No	No	Yes	No	Yes	Yes
Iowa	Yes ³¹	Yes	Yes	No	Yes	No ³²	No
Kansas	Yes	Yes	Yes	No	Yes	No	No
Kentucky	No ³³	No	No	No	No	No	No
Louisiana	Yes ³⁴	Yes	Yes	Yes	Yes	No	Yes
Maine	Yes ³⁵	Yes	Yes	Yes	Yes	No	Yes
Maryland	No ³⁶	Yes ³⁷	No ³⁸	Yes	Yes	No	No
Massachusetts	Yes	Yes	Yes	Depends	Depends	Depends	Depends
Michigan	Yes ³⁹	Yes	Yes	Yes ⁴⁰	Yes ⁴¹	No	No ⁴²
Minnesota	Yes ⁴³	Yes	Yes	No	No	No	Yes

²³ DC: No only if not conducting DC business.

²⁴ FL: It depends on the facts and circumstances.

²⁵ FL: Per Rule 12C-1.011(1)(I), F.A.C., having employees that are present in Florida and that perform functions other than the solicitation of sales within Florida creates nexus.

²⁶ GA: The answer would not be different [if the out-of-state corporation made no sales in the state or if the employees telecommute for only part of their total work time.]

²⁷ ID: Depends on facts, employees generally create nexus.

²⁸ ID: So long as seminar/training is not conducted by employer/taxpayer.

²⁹ ID: Depends on facts and circumstances.

³⁰ IL: Answer does not change [if the out-of-state corporation made no sales in the state or if the employees telecommute for only part of their total work time.]

³¹ IA: The answer would be the same [if the out-of-state corporation made no sales in the state or if the employees telecommute for only part of their total work time.]

³² IA: Training and education activities exempt due to Iowa Code section 422.34A(7).

³³ KY: Employees telecommuting from their homes in Kentucky would not create nexus for a corporation regardless of the circumstances.

³⁴ LA: No different answer [if the out-of-state corporation made no sales in the state, or if the employees telecommute for only part of their total work time.]

³⁵ ME: No, [the answer would not change if the out-of-state corporation made no sales in the state, or if the employees telecommute for only part of their total work time.]

³⁶ MD: But depends on the activities conducted by the employees.

³⁷ MD: Depends on whether portion of residence is used exclusively for business, is reimbursed by the corporation, is used to host meetings, or is used to store property of the corporation.

³⁸ MD: *Id.*

³⁹ MI: No, answer would not change [if the out-of-state corporation made no sales in Michigan or if the employees telecommute for only part of their total work time.]

⁴⁰ MI: If physically present in Michigan for more than 2 days.

⁴¹ MI: *Id.*

⁴² MI: Only if the activity is conducted in Michigan for fewer than 10 days. If the activity is conducted in Michigan for more than 10 days, whether nexus is created will depend on the facts and circumstances.

⁴³ MN: Nexus is established when any activity beyond solicitation occurs as provided in PUB. L. NO. 86-272.

State ¹	One to 6 employees telecommuting from home doing non-solicitation activities ²	One employee telecommuting from home doing back office functions ³	One employee telecommuting from home doing product development functions ⁴	Assist legal counsel ⁵	Purchase raw materials ⁶	Attend seminars ⁷	Attend meetings one to 14 days ⁸
Mississippi	No ⁴⁴	No	No	Yes	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	No	No
Montana	Yes ⁴⁵	Yes	Yes	Yes	Yes	No	No
Nebraska	Yes ⁴⁶	Yes	Yes	Yes	Yes	No	Yes ⁴⁷
New Hampshire	Yes ⁴⁸	Yes	Yes	Yes	Yes	Yes	Depends
New Jersey	Yes ⁴⁹	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	No	No
New York City	Yes	Yes	Yes	No	Yes	No	No
North Carolina	Yes ⁵⁰	Yes ⁵¹	Yes	Yes	No	No	No
North Dakota ⁵²	Yes ⁵³	Yes	Yes	No Response ⁵⁴	Yes	No	No
Oklahoma	No	No Response	No Response	Yes	Yes	No	No
Oregon	Yes ⁵⁵	Yes	Yes	No	No	No	No
Pennsylvania	Yes ⁵⁶	Yes	Yes	Yes	No	No	Yes
Rhode Island	Yes ⁵⁷	Yes	Yes	Yes	No	No	No
South Carolina	Yes	Yes	Yes	No ⁵⁸	No	No	No
Tennessee	Yes ⁵⁹	No ⁶⁰	No ⁶¹	No	No	No	No

⁴⁴ MS: No, it is not a nexus creating activity.

⁴⁵ MT: No change in answer for scenarios given. Answer would still be yes if the corporation made no sales in Montana or if the employees telecommute for only part of their total work time.

⁴⁶ NE: The corporation would still have nexus even if no sales were made in this state or the employees worked part time.

⁴⁷ NE: Board of directors meeting creates nexus.

⁴⁸ NH: The answer would not be different [if the corporation made no sales in New Hampshire or if the employees telecommute for only part of their total work time.]

⁴⁹ NJ: The answer would not be different if the corporation made no sales in this State. *See Telebright Corporation v. Director, Division of Taxation*, N.J. Tax Court Docket No. 011066-2008, decided March 24, 2010.

⁵⁰ **NC: The determination would not be based on whether or not the company has sales in North Carolina.**

⁵¹ NC: Depends on the facts and circumstances of each case.

⁵² ND: Assumption is the employee is a "sales" employee (performing non-sales related activities).

⁵³ ND: [There would still be nexus if the corporation made no sales in North Dakota.] If only telecommuting for "part" of their work, determination would depend on whether a "base of operations" was established in a state.

⁵⁴ ND: May be relevant of why the corporation is being sued in a state.

⁵⁵ OR: There would still be nexus if the corporation made no sales in Oregon or if the employees telecommuted for only part of their total work time.

⁵⁶ **PA: No, [the answer would not be different if the corporation made no sales in Pennsylvania or if the employees telecommute for only part of their total work time.]**

⁵⁷ RI: Same answer if no sales in state or employees telecommute for only part of their total work time.

⁵⁸ SC: *See* S.C. Rev. Rul. No. 08-1 where it concluded that the use of the S.C. court system by an out-of-state company sending various employees to SC to assist its independent legal counsel defend a lawsuit does not give the out-of-state company nexus with SC. The law firm providing counsel is taxable in SC.

⁵⁹ TN: Answer would not change if the corporation made no Tennessee sales or if the employees telecommute for only part of their work time. However, a person living in Tennessee and doing work that does not involve contact with Tennessee customers or direct promotion of business in Tennessee, such as payroll, accounts payable, or planning projects for out-of-state headquarters would not result in nexus if no other Tennessee nexus activities exist.

⁶⁰ TN: Answers assume the employer's Tennessee payroll does not exceed \$50,000 or 25% of the employer's total payroll.

⁶¹ TN: *Id.*

State ¹	One to 6 employees telecommuting from home doing non-solicitation activities ²	One employee telecommuting from home doing back office functions ³	One employee telecommuting from home doing product development functions ⁴	Assist legal counsel ⁵	Purchase raw materials ⁶	Attend seminars ⁷	Attend meetings one to 14 days ⁸
Texas	Yes ⁶²	Yes	Yes	Yes	No	No	Yes
Utah	Yes ⁶³	Yes	Yes	Yes	No	No	No
Vermont ⁶⁴	Yes	Yes	Yes	No	No Response	No	No
Virginia	Yes ⁶⁵	Yes	Yes	No	No	No	No
West Virginia	Yes	Yes	Yes	No	Yes	No	No
Wisconsin	Yes ⁶⁶	Yes	Yes	Yes	Yes	No	Depends

⁶² TX: The answer will not change if no sales are made in Texas or if the employees telecommute for only part of their total work time.

⁶³ UT: If no sales are made into the state, nexus would still be created. If telecommuting part time in Utah, nexus would be created unless the Utah wages were de minimis.

⁶⁴ VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

⁶⁵ VA: Nexus requires at least one positive apportionment factor. If the corporation made no sales in Virginia, it would only have nexus if it had a positive property or payroll factor. The answer would not change if the employees telecommute for only part of their total work time.

⁶⁶ WI: The answer would remain the same [if the corporation made no sales in Wisconsin or if the employees telecommuted for only part of their total work time].

Nexus-Creating Activities: Employee Activities — Non-Sales Related (Part 4 of 4)

State ¹	Fly into state on commercial airline one to four times ²	Fly into state on commercial airline five or more times ³	Attend seminar in corp. plane ⁴	Attend sports event in corp. plane ⁵	In state one to 14 days on yacht ⁶	Hiring/recruitment activities ⁷	Hiring/training employees ⁸
Alabama ⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	No	No	No	No ¹⁰	No ¹¹
Arkansas	No	No	No	No	No	Yes	Yes
California	Depends ¹²	Depends ¹³	Depends ¹⁴	Yes	Depends ¹⁵	Yes	Yes
Colorado	Yes ¹⁶	Yes ¹⁷	No	No	Not Applicable	No Response ¹⁸	No Response ¹⁹
Connecticut	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	No Response	No Response	No	No	Yes	No	Yes
District of Columbia	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes	Yes
Florida ²⁰	Yes	Yes	No	No	No	Yes	Yes
Georgia	Yes	Yes	Depends	Depends	Depends	No	Yes
Hawaii	Depends	Depends	No	No	No	No	No Response ²¹
Idaho	Yes	Yes	No ²²	Depends	Depends	Depends	Yes
Illinois	Yes	Yes	No	No	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Employees, while in your state, fly into your state on a commercial airline for business purposes one to four times per year.

³ Employees, while in your state, fly into your state on a commercial airline for business purposes five or more times per year.

⁴ Employees, while in your state, fly into your state on a company plane to attend a seminar.

⁵ Employees, while in your state, fly into your state on a company plane to attend sports events at least four times, but fewer than 10 times per year.

⁶ Employees, while in your state, attend seminars or social functions while staying on a company yacht docked in waters in your state for one to 14 days.

⁷ Employees, while in your state, hold job fairs, hiring events, or other recruiting activities.

⁸ Employees, while in your state, hire, supervise, or train other employees.

⁹ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272. **Otherwise, nexus is established by payroll > \$50,000.**

¹⁰ AZ: If the company's business is hiring and recruiting, the answer is yes.

¹¹ AZ: For solicitation purposes only (tangible personal property). If for services or non solicitation purposes, the answer is yes.

¹² CA: CCR §23101.5 might apply.

¹³ CA: *Id.*

¹⁴ CA: CCR §23101.5(c) might apply.

¹⁵ CA: *Id.*

¹⁶ CO: If meets nexus dollar or percentage threshold.

¹⁷ CO: *Id.*

¹⁸ CO: Not unless taxpayer otherwise meets nexus dollar or percentage threshold.

¹⁹ CO: *Id.*

²⁰ FL: **It depends on the facts and circumstances.**

²¹ HI: The supervision of employees in the state presumes nexus by presence.

²² ID: Depends on facts and circumstances.

State ¹	Fly into state on commercial airline one to four times ²	Fly into state on commercial airline five or more times ³	Attend seminar in corp. plane ⁴	Attend sports event in corp. plane ⁵	In state one to 14 days on yacht ⁶	Hiring/recruitment activities ⁷	Hiring/training employees ⁸
Indiana	No	No	No	No	No	No	Yes
Iowa	Yes ²³	Yes ²⁴	No	No	No	No ²⁵	No ²⁶
Kansas	Yes	Yes	No	No	No	No	Yes
Kentucky	Depends	Depends	No	No	No	No	Yes
Louisiana	Yes	Yes	No	No	Yes	Yes	Yes
Maine	Yes	Yes	No	No	No	Yes ²⁷	Yes ²⁸
Maryland	No	No	No	No	No	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends	Depends	Yes	Depends
Michigan	Yes ²⁹	Yes	No ³⁰	No	No ³¹	No ³²	Yes ³³
Minnesota	Yes ³⁴	Yes ³⁵	Yes	Yes	Yes	Yes	Yes
Mississippi	No	No	No	No	No	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	No	Yes
Montana	Depends	Depends	No	Depends	Depends	No	Yes
Nebraska	Yes	Yes	No	No	No	No	Yes
New Hampshire	Yes	Yes	Depends	Yes	Depends	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	No	No	No	No	No	Yes	Yes
New York City	No Response³⁶	No Response³⁷	No	No	No	No Response³⁸	Yes
North Carolina	Yes ³⁹	Yes ⁴⁰	No	No	No	Yes	Yes ⁴¹

²³ IA: The answer may depend on the specific business purposes.

²⁴ IA: *Id.*

²⁵ IA: Answer is no if hiring occurs outside the state per section 422.34A(6).

²⁶ IA: *Id.*

²⁷ ME: No, if limited to personnel involved only in solicitation of orders for sales of tangible personal property.

²⁸ ME: *Id.*

²⁹ MI: If physically present in Michigan for more than 2 days.

³⁰ MI: Only if the activity is conducted in Michigan for fewer than 10 days. If the activity is conducted in Michigan for more than 10 days, whether nexus is created will depend on the facts and circumstances.

³¹ MI: *Id.*

³² MI: *Id.*

³³ MI: If physically present in Michigan for more than 2 days. Only if the activity is conducted in Michigan for fewer than 10 days. If the activity is conducted in Michigan for more than 10 days, whether nexus is created will depend on the facts and circumstances.

³⁴ MN: Assumes the "business purposes" is other than the solicitation of sales.

³⁵ MN: *Id.*

³⁶ NYC: **See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002.**

³⁷ NYC: *Id.*

³⁸ NYC: *Id.*

³⁹ NC: Depends on the facts and circumstances of each case.

⁴⁰ NC: *Id.*

⁴¹ NC: If employees are engaged in activities outside of solicitation.

State ¹	Fly into state on commercial airline one to four times ²	Fly into state on commercial airline five or more times ³	Attend seminar in corp. plane ⁴	Attend sports event in corp. plane ⁵	In state one to 14 days on yacht ⁶	Hiring/recruitment activities ⁷	Hiring/training employees ⁸
North Dakota ⁴²	No ⁴³	No ⁴⁴	No	No	No	No ⁴⁵	No ⁴⁶
Oklahoma	No	No	No	No	No	Yes	Yes
Oregon	No	No	No	No	No	Yes	Yes
Pennsylvania	Yes	Yes	No	No	No	No	Yes
Rhode Island	No Response ⁴⁷	No Response ⁴⁸	No	No	No	Yes	Yes
South Carolina	No Response	No Response	No	No Response	No	No Response	Yes⁴⁹
Tennessee	Yes	Yes	No	No	No	Yes ⁵⁰	Yes ⁵¹
Texas	Yes	Yes	No	No	No	No	No Response ⁵²
Utah	Depends ⁵³	Depends ⁵⁴	No	No	No	No	Yes ⁵⁵
Vermont ⁵⁶	No Response	No Response	No	No	No	No	Yes ⁵⁷
Virginia	Not Applicable ⁵⁸	Not Applicable ⁵⁹	No	No	No	No ⁶⁰	Yes ⁶¹
West Virginia	Yes	Yes	No	No	No	No	No
Wisconsin	Depends	Depends	No	No	Depends	Yes	Yes

⁴² ND: Assumption is the employee is a "sales" employee (performing non-sales related activities).

⁴³ ND: Merely flying into the state would not itself create nexus. Answer depends on what the person does while in the state.

⁴⁴ ND: *Id.*

⁴⁵ ND: Answer assumes employee does not live in the state.

⁴⁶ ND: Answer assumes employee does not live in the state. Assume employees being trained are sales related. If employee being trained is not sales related, nexus would be created.

⁴⁷ RI: It depends on the business activity.

⁴⁸ RI: *Id.*

⁴⁹ **SC: Unless sales training.**

⁵⁰ TN: Answers assume that employees recruited or hired are not sales personnel.

⁵¹ TN: *Id.*

⁵² TX: Hiring other employees does not create nexus but coming into Texas to supervise or train other employees does.

⁵³ UT: There is insufficient information to make a determination on this activity.

⁵⁴ UT: *Id.*

⁵⁵ UT: If training is limited to employees that are engaged in the sale of tangible personal property and their activities do not exceed mere solicitation of sales, then nexus would not be created.

⁵⁶ VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

⁵⁷ VT: If the training takes place in state, nexus is established.

⁵⁸ VA: The answer to this question is uncertain because it does not describe the nature of the business, if any, conducted in the state.

⁵⁹ VA: *Id.*

⁶⁰ VA: Probably de minimis.

⁶¹ VA: The term "supervise" implies a continuous pattern of activities, which would not be de minimis. See P.D. 01-157.

Nexus-Creating Activities: Activities of Unrelated Parties (Part 1 of 2)

State ¹	Fulfillment services ²	Collect delinquent accounts ³	Investigate credit worthiness ⁴	Repossess property one to 6 times ⁵	Repair service one to 6 times ⁶
Alabama ⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No ⁸	No ⁹	No	No ¹⁰
Arkansas	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes	Yes
Colorado ¹¹	Yes	Yes	Yes	Yes	Yes
Connecticut	Depends	Depends	Depends	Depends	Depends
Delaware	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes
Illinois	Yes	No	No	Yes	No
Indiana	Yes	Yes	Yes	Yes	Yes
Iowa	Yes ¹²	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	No	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Unrelated third parties located in your state provide fulfillment services (i.e., fill product orders from corporate-owned inventory).

³ Unrelated third parties located in your state collect regular or delinquent accounts.

⁴ Unrelated third parties located in your state investigate credit worthiness of new customers.

⁵ Unrelated third parties located in your state repossess property one to six times a year.

⁶ Unrelated third parties located in your state repair or provide maintenance, including warranty services, one to six times per year.

⁷ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272.

⁸ AZ: The answer is no if the unrelated party provides the same service to other entities unrelated to the taxpayer.

⁹ AZ: *Id.*

¹⁰ AZ: *Id.*

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² IA: Fulfillment services may not create nexus if criteria in Iowa Code section 422.34A(8) are met.

State ¹	Fulfillment services ²	Collect delinquent accounts ³	Investigate credit worthiness ⁴	Repossess property one to 6 times ⁵	Repair service one to 6 times ⁶
Massachusetts	Depends	Depends ¹³	Depends ¹⁴	Depends ¹⁵	Depends ¹⁶
Michigan ¹⁷	Yes	Yes	Yes	Yes ¹⁸	Yes ¹⁹
Minnesota	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes
New York City²⁰	Yes²¹	No	No	No	Yes
North Carolina	Yes	Yes	No	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	No	No
Oregon	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes
Rhode Island	No	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes ²²	Yes ²³	No Response	No Response
Tennessee ²⁴	Yes	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes
Vermont ²⁵	No	Yes	Yes	Yes	Yes

¹³ MA: Pursuant to 830 CMR 63.39.1(7) “the activities of employees, agents, or representatives, however designated, of the foreign corporation will be imputed to the corporation. An agent or representative may be an individual, corporation, partnership, or other entity. Activities of an independent contractor will not be imputed to the corporation.”

¹⁴ MA: *Id.*

¹⁵ MA: *Id.*

¹⁶ MA: *Id.*

¹⁷ MI: If the unrelated parties are acting on behalf of the taxpayer and constitute the taxpayer’s agent or independent contractor acting in a representative capacity.

¹⁸ MI: And if physically present in Michigan for more than 2 days.

¹⁹ MI: *Id.*

²⁰ NYC: **See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.**

²¹ NYC: NYC differs from New York state on this.

²² SC: **If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.**

²³ SC: *Id.*

²⁴ TN: Answers given assume the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are “unrelated,” it appears that there may be an agency relationship that would create tax nexus for the principal. Absent such an agency relationship, the activities stated will not create Tennessee franchise, excise tax nexus for the principal.

²⁵ VT: **All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.**

State¹	Fulfillment services²	Collect delinquent accounts³	Investigate credit worthiness⁴	Repossess property one to 6 times⁵	Repair service one to 6 times⁶
Virginia	Yes ²⁶	No	No	No ²⁷	No ²⁸
West Virginia	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	No ²⁹	No ³⁰	Yes	Yes ³¹

²⁶ VA: The Department's long standing policy is that the presence of any inventory in Virginia subjects a corporation to income tax. See, e.g., P.D. 88-146, P.D. 97-447, and P.D. 02-132.

²⁷ VA: Repossession could create nexus if the corporation takes title to the property.

²⁸ VA: See P.D. 01-136 and P.D. 10-252.

²⁹ WI: No, provided there is not an agency relationship between the company and the unrelated third party.

³⁰ WI: *Id.*

³¹ WI: Yes, provided the corporation supervises, monitors, inspects, approves, or is ultimately responsible for the work performed by the third party.

Nexus-Creating Activities: Activities of Unrelated Parties (Part 2 of 2)

State ¹	Installation service ²	Provide warranty repairs ³	Close mortgage loans ⁴	Service mortgage loans ⁵
Alabama ⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	No ⁷	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes
Colorado ⁸	Yes	Yes	Yes	Yes
Connecticut	Depends	Depends	Depends	Depends
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Depends	Depends
Idaho	Yes	Yes	Yes	Yes
Illinois	No	No	No Response ⁹	No Response ¹⁰
Indiana	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes
Maryland	No	Yes	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² Unrelated third parties located in your state assist with the "set-up" or installation of the company's products.

³ Unrelated third parties located in your state perform repairs under a standard or extended warranty.

⁴ Unrelated third parties located in your state close mortgage loans for an out-of-state financial organization.

⁵ Unrelated third parties located in your state service mortgage and/or consumer loans for an out-of-state financial organization.

⁶ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272.

⁷ AZ: The answer is no if the unrelated party provides the same service to other entities unrelated to the taxpayer.

⁸ CO: If meets nexus dollar or percentage threshold.

⁹ IL: Insufficient information is provided to answer the question.

¹⁰ IL: *Id.*

State ¹	Installation service ²	Provide warranty repairs ³	Close mortgage loans ⁴	Service mortgage loans ⁵
Michigan ¹¹	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	No	No
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes
New York City¹²	Yes	No	No	No
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	No
Oregon	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	No Response	No Response	Yes ¹³	Yes ¹⁴
Tennessee ¹⁵	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes
Vermont ¹⁶	Yes	Yes	Yes	Yes
Virginia	No ¹⁷	No ¹⁸	No ¹⁹	No ²⁰
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes ²¹	Yes ²²	Depends ²³	Depends ²⁴

¹¹ MI: If the unrelated parties are acting on behalf of the taxpayer and constitute the taxpayer's agent or independent contractor acting in a representative capacity.

¹² NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.

¹³ SC: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.

¹⁴ SC: *Id.*

¹⁵ TN: Answers given assume the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are "unrelated," it appears that there may be an agency relationship that would create tax nexus for the principal. Absent such an agency relationship, the activities stated will not create Tennessee franchise, excise tax nexus for the principal.

¹⁶ VT: All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.

¹⁷ VA: See P.D. 09-44.

¹⁸ VA: See P.D. 01-136 and P.D. 08-184.

¹⁹ VA: See P.D. 84-40.

²⁰ VA: *Id.*

²¹ WI: Yes, provided the corporation supervises, monitors, inspects, approves, or is ultimately responsible for the work performed by the third party.

²² WI: *Id.*

²³ WI: Yes, depending on facts and circumstances.

²⁴ WI: *Id.*

Nexus-Creating Activities: Distribution and Delivery (Part 1 of 2)

State ¹	Ships in returnable containers ²	Delivers in corp.-owned trucks ³	Picks up defective goods in corp.-owned trucks ⁴	Picks up raw materials in corp.-owned trucks ⁵
Alabama ⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	No	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes
Colorado	No	Yes ⁷	Yes ⁸	Yes ⁹
Connecticut	Depends	Depends	Yes	Depends
Delaware	Yes	Yes	Yes	No Response
District of Columbia	No	Yes	Yes	No
Florida	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes
Hawaii	No	Not Applicable	Yes	No
Idaho	Yes	No	Yes	Yes
Illinois ¹⁰	No	No	Yes	Yes
Indiana	No	Yes	Yes	No
Iowa	Yes	No	Yes	Yes
Kansas	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	No	Yes	Yes
Maryland	No	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation ships products into your state in returnable containers.

³ The out-of-state corporation delivers goods into your state (from a point outside your state) to customers in the corporation's owned or leased vehicles.

⁴ The out-of-state corporation picks up defective products or scrap materials in your state in taxpayer-owned vehicles.

⁵ The out-of-state corporation picks up raw materials in your state in taxpayer-owned vehicles.

⁶ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272.

⁷ CO: If meets nexus dollar or percentage threshold.

⁸ CO: *Id.*

⁹ CO: *Id.*

¹⁰ IL: *See* Department Regulations 100.9720(c)(1)(A).

State ¹	Ships in returnable containers ²	Delivers in corp.-owned trucks ³	Picks up defective goods in corp.-owned trucks ⁴	Picks up raw materials in corp.-owned trucks ⁵
Massachusetts ¹¹	Depends	Depends ¹²	Depends ¹³	Depends ¹⁴
Michigan	Yes	Yes ¹⁵	Yes ¹⁶	Yes ¹⁷
Minnesota	Yes	No	Yes	Yes
Mississippi	Yes	Yes	Yes	No
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	No	Yes	Yes
Nebraska	Yes	No	Yes	Yes
New Hampshire	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	No
New Mexico	Yes	Yes	Yes	Yes
New York City	No	Yes¹⁸	Yes¹⁹	Yes²⁰
North Carolina	No ²¹	No ²²	Yes	No
North Dakota	No ²³	No	Yes	Yes
Oklahoma	Yes	Yes	Yes	Yes
Oregon	No	No	Yes	No
Pennsylvania	Yes	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	Yes ²⁴	No	Yes	No ²⁵
Tennessee	No	No	Yes	No
Texas	No	Yes	Yes	No
Utah	Yes	No	Yes	Yes

¹¹ MA: See TIR's 98-13 & 06-9, DD 95-7 & 830 CMR 63.38.10.

¹² MA: Pursuant to 830 CMR 63.39.1(6), "A foreign corporation is not subject to the corporate excise under M.G.L. c. 63, §39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by M.G.L. c. 63, §39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extend to foreign carriers whose vehicles enter Massachusetts)."

¹³ MA: *Id.*

¹⁴ MA: *Id.*

¹⁵ MI: If physically present in Michigan 2 or more days.

¹⁶ MI: *Id.*

¹⁷ MI: *Id.*

¹⁸ NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.

¹⁹ NYC: *Id.*

²⁰ NYC: *Id.*

²¹ NC: Although this activity does not subject a taxpayer to income tax because of the protection provided by Public Law 86-272, it does give the Taxpayer nexus for franchise tax purposes.

²² NC: *Id.*

²³ ND: Assuming returnable containers are returned and have no other use for either customer or taxpayer, while located at the customer.

²⁴ SC: Assuming the corporation asks for their return.

²⁵ SC: Assuming the pickup is not a back haul (i.e., the out-of-state corporation picks up shipments at the destination or nearby location in South Carolina for delivery to another point).

State ¹	Ships in returnable containers ²	Delivers in corp.-owned trucks ³	Picks up defective goods in corp.-owned trucks ⁴	Picks up raw materials in corp.-owned trucks ⁵
Vermont ²⁶	Yes	Yes	Yes	No Response
Virginia	No	No ²⁷	No ²⁸	No ²⁹
West Virginia	No	Yes	Yes	Yes
Wisconsin	Yes	No	Yes	Yes

²⁶ VT: All nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

²⁷ VA: See *Commonwealth v. Nat'l Private Truck Council*, 253 Va. 74, 480 S.E.2d 500 (1997). Assumes corporation is otherwise protected by P.L. 86-272 and is not conducting a transportation business.

²⁸ VA: Assumes corporation is otherwise protected by P.L. 86-272 and is not conducting a transportation business.

²⁹ VA: *Id.*

Nexus-Creating Activities: Distribution and Delivery (Part 2 of 2)

State ¹	Is in state one to 6 days in corp.-owned trucks ²	Is in state > 6, but < 12 days in corp.-owned trucks ³	Is in state > 12 days in corp.-owned trucks ⁴	“Backhauls” in corp.-owned trucks ⁵	Holds title to electricity ⁶	Holds title to natural gas ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	Yes	No	No
Arkansas	No	No	No	Yes	No ⁹	No ¹⁰
California	Yes	Yes	Yes	Yes	No	Yes
Colorado	No	No	No	Yes ¹¹	No ¹²	Yes ¹³
Connecticut	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	No	No	No	Yes	Yes	Yes
District of Columbia	No	No	No	No	No	No
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	No	No	No	Yes	No	No
Hawaii	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Idaho	Depends ¹⁴	Depends ¹⁵	Depends ¹⁶	Yes	Yes	Yes
Illinois ¹⁷	Yes	Yes	Yes	Yes	No	Yes
Indiana	No	No	No	Yes	No	No

¹ Responses in bold indicate the answers changed from last year’s survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent’s answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

³ The out-of-state corporation travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

⁴ The out-of-state corporation travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

⁵ The out-of-state corporation “backhauls” (i.e., pick up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.

⁶ The out-of-state corporation holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).

⁷ The out-of-state corporation holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).

⁸ AL: The thresholds of factor presence nexus do not apply if the taxpayer falls within the protection of PL 86-272.

⁹ AR: Owning or renting pipelines or electric lines in Arkansas does create nexus.

¹⁰ AR: *Id.*

¹¹ CO: If meets nexus dollar or percentage threshold.

¹² CO: *But see Xcel v. Dept. of Revenue*, currently on appeal.

¹³ CO: If inventory. If meets nexus dollar or percentage threshold.

¹⁴ ID: Depends on total miles driven in state and percent of total miles driven in state. Nexus for trucking companies exists if any of the following applies: (a) Trucks owned or rented that travel more than 25,000 miles in Idaho during a taxable year; (b) Total miles traveled in Idaho by owned or rented trucks exceeds 3% of the total truck miles traveled during the taxable year; or (c) the company makes more than 12 trips in Idaho during the taxable year.

¹⁵ ID: *Id.*

¹⁶ ID: *Id.*

¹⁷ IL: *See* Department Regulations 100.9720(c)(1)(A).

State ¹	Is in state one to 6 days in corp.-owned trucks ²	Is in state > 6, but < 12 days in corp.-owned trucks ³	Is in state > 12 days in corp.-owned trucks ⁴	“Backhauls” in corp.-owned trucks ⁵	Holds title to electricity ⁶	Holds title to natural gas ⁷
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	No	No	No	Yes	No	No
Kentucky	No	No	No	Yes	Yes	Yes
Louisiana	Yes ¹⁸	Yes ¹⁹	Yes	Yes	Yes	Yes
Maine	No	No	No	Yes	Yes	Yes
Maryland	No	No	No	Yes	Yes	Yes
Massachusetts ²⁰	Depends	Depends	Depends ²¹	Depends ²²	Depends ²³	Depends ²⁴
Michigan	Yes	Yes	Yes	Yes ²⁵	No Response ²⁶	No Response ²⁷
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	No	No	No	Yes	No	No
Missouri	No	No	Yes	Yes	No	No
Montana	No Response ²⁸	No Response ²⁹	Yes	Yes	Yes ³⁰	Yes ³¹
Nebraska	No	No	Yes	Yes	Yes	Yes
New Hampshire	No	No	No	Yes	No	No
New Jersey	No	No	No	Yes	No	No
New Mexico	No	No	Yes	Yes	Yes	Yes
New York City³²	No	No	No	Yes	No	No
North Carolina	No	No	No	Yes	No	No
North Dakota	No ³³	No ³⁴	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	Yes	Yes	Yes
Oregon	No	No	No	Yes	Yes	Yes

¹⁸ LA: Unless the taxpayer is a trucking company - see LSA R.S. 47:287.95(C)(2)(A).

¹⁹ LA: *Id.*

²⁰ MA: See TIR's 98-13 & 06-9, DD 95-7 & 830 CMR 63.38.10.

²¹ MA: Pursuant to 830 CMR 63.39.1(6), “A foreign corporation is not subject to the corporate excise under M.G.L. c. 63, §39, because of its ownership of tangible personal property in actual transit through Massachusetts in the possession and control of a common or contract carrier (provided, however, that this provision shall not preclude the exercise of jurisdiction over foreign carriers whose vehicles enter Massachusetts) or because of its ownership of tangible personal property stored in a licensed public warehouse in Massachusetts. The exemption from taxation provided by M.G.L. c. 63, §39, for the ownership of goods stored in a licensed public warehouse will not be lost because of the shipment of those goods by common or contract carriers from the public warehouse to locations either within or outside of Massachusetts (provided, however, that the exemption does not extend to foreign carriers whose vehicles enter Massachusetts).”

²² MA: *Id.*

²³ MA: *Id.*

²⁴ MA: *Id.*

²⁵ MI: If physically present in Michigan 2 or more days.

²⁶ MI: Policy under review.

²⁷ MI: *Id.*

²⁸ MT: Depends on number of miles driven. See Administrative Rule of Montana 42.26.706.

²⁹ MT: *Id.*

³⁰ MT: Depends on facts and circumstances.

³¹ MT: *Id.*

³² NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.

³³ ND: No, if less than 25,000 miles in state per year.

³⁴ ND: *Id.*

State ¹	Is in state one to 6 days in corp.-owned trucks ²	Is in state > 6, but < 12 days in corp.-owned trucks ³	Is in state > 12 days in corp.-owned trucks ⁴	“Backhauls” in corp.-owned trucks ⁵	Holds title to electricity ⁶	Holds title to natural gas ⁷
Pennsylvania	Yes	Yes	Yes	Yes	Depends	Depends
Rhode Island	No	No	No	Yes	No	No
South Carolina	No Response	No Response	No Response	Yes	No ³⁵	No ³⁶
Tennessee	No	No	No	Yes	No	No
Texas	No Response ³⁷	No Response ³⁸	No Response ³⁹	Yes	No	No
Utah	No	No	Yes	Yes	Yes	Yes
Vermont ⁴⁰	No	No	No	No Response	No Response	No Response
Virginia	No	No	No	Yes ⁴¹	No	No
West Virginia	No	No	No	No	No	No
Wisconsin	Yes ⁴²	Yes ⁴³	Yes ⁴⁴	Yes	No	No

³⁵ SC: Assuming the corporation does not own or lease the transmission wire.

³⁶ SC: Assuming the corporation does not own or lease the pipeline.

³⁷ TX: Merely traveling through Texas does not create nexus. If “traveling to the state,” additional information regarding activities performed in Texas is required to determine nexus activities.

³⁸ TX: *Id.*

³⁹ TX: *Id.*

⁴⁰ VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

⁴¹ VA: *Cf.* P.D. 99-116 (ruling the shipment of tangible personal property to the taxpayer’s salesperson in Virginia for delivery to customer constitutes the receipt and maintenance of inventory in Virginia).

⁴² WI: Creates nexus if taxpayer is a common or contract carrier.

⁴³ WI: *Id.*

⁴⁴ WI: *Id.*

Nexus-Creating Activities: Financial Activities/Transactions (Part 1 of 2)

State ¹	Negotiates bank loans ²	Makes mortgage loans ³	Makes secured personal loans ⁴	Issues credit cards ⁵	Purchases mortgage loans ⁶	Purchases personal loans ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	Yes	Yes	Yes	No	No
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	No Response ⁹	Depends	No
Colorado	No	No	No	Yes ¹⁰	No	No
Connecticut	No	Depends ¹¹	Depends ¹²	Depends ¹³	Depends ¹⁴	Depends ¹⁵
Delaware	No	Yes	Yes	No	Yes	Yes
District of Columbia	No	Yes	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	No	Yes	No
Hawaii	Depends	Depends	Depends	Depends	Depends	Depends
Idaho	No	Yes	Yes	Yes	Yes	No
Illinois	No Response ¹⁶	Yes	Yes	Yes	Yes	No Response ¹⁷
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	No	Yes	Yes	Yes ¹⁸	Yes	Yes
Kansas	No	Yes	Yes	Yes	No	No
Kentucky	No	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation negotiates and obtains bank loans from a bank located in your state (assume officers of the corporation visit the bank at least twice a year to discuss business).

³ The out-of-state corporation makes loans secured by real estate located in your state.

⁴ The out-of-state corporation makes personal loans secured by tangible property located in your state.

⁵ The out-of-state corporation issues credit cards to residents of your state.

⁶ The out-of-state corporation purchases, via the secondary market, loans secured by real estate located in your state.

⁷ The out-of-state corporation purchases, via the secondary market, credit account balances of residents of your state.

⁸ **AL: Factor presence nexus applies.**

⁹ CA: There may be nexus if the credit cards are used and the corporation generates receipts therefrom at levels above RTC section 23101(b).

¹⁰ CO: If meets nexus dollar or percentage threshold.

¹¹ CT: See Conn. Gen. Stat. § 12-216a; IP 2010(29.1).

¹² CT: *Id.*

¹³ CT: *Id.*

¹⁴ CT: *Id.*

¹⁵ CT: *Id.*

¹⁶ IL: Insufficient information.

¹⁷ IL: *Id.*

¹⁸ IA: Economic nexus standard is used.

State ¹	Negotiates bank loans ²	Makes mortgage loans ³	Makes secured personal loans ⁴	Issues credit cards ⁵	Purchases mortgage loans ⁶	Purchases personal loans ⁷
Louisiana	Yes	Yes	Yes	No	No	No
Maine ¹⁹	No	Yes	Yes	No	No	No
Maryland	No	Yes	Yes	No	Yes	No
Massachusetts ²⁰	No	Yes	Yes	Yes	Yes	Yes
Michigan	No ²¹	No	No	No	No	No
Minnesota	No	Yes	Yes	Yes	No	No
Mississippi	No	Yes	Yes	Yes	Yes	Yes
Missouri	No	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
New Hampshire ²²	Yes	Yes	Yes	Yes	Depends	Depends
New Jersey	No	Yes	Yes	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York City²³	No	Yes	Yes	Yes	Yes	No Response
North Carolina	No	Yes ²⁴	No	Yes ²⁵	No	No
North Dakota	No	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	No	No	No
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	Yes	Yes	Depends	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	No
South Carolina	No	No Response ²⁶	No Response ²⁷	Yes	No Response ²⁸	No Response ²⁹

¹⁹ ME: Depends on facts and circumstances. **All answers apply to Maine corporate income tax, not Maine franchise tax.**

²⁰ MA: See TIR's 95-6 & 00-6.

²¹ MI: If visits to bank are fewer than 10 per year. **See RAB 2014-5.**

²² NH: See RSA 77-A:1, XII.

²³ **NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services. Pursuant to Administrative Code § 11-653(c) credit card companies with one thousand or more customers having a mailing address in New York City are subject to the business corporation tax regardless of whether the credit card company has a physical location in the city.**

²⁴ NC: See Directive 99-1.

²⁵ NC: Provided issuer has substantial nexus in the State through its physical presence or its representative's physical presence in the State or its active solicitation of NC residents.

²⁶ SC: No response, depends on facts that are not provided.

²⁷ SC: No response, depends on facts that are not provided. S.C. Rev. Rul. No. 08-1 provides an example where a NC finance company does business in NC and TN. The company makes a personal loan to a NC resident who moves to SC the following year. The finance company does not have nexus with SC. The result would not change if the NC resident who moved to SC had his personal car secured by the NC loan. Further, the finance company does not have nexus with SC if the SC borrower contacts the NC finance company to renew the loan.

²⁸ SC: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NY finance company is in the business of packaging and selling credit card and mortgage loans **to passive investors throughout the US. A few** of the debtors and **some** of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser "services" the loans in SC, there may be nexus depending on the facts and circumstances.

²⁹ SC: *Id.*

State ¹	Negotiates bank loans ²	Makes mortgage loans ³	Makes secured personal loans ⁴	Issues credit cards ⁵	Purchases mortgage loans ⁶	Purchases personal loans ⁷
Tennessee ³⁰	No	No	No	No ³¹	No	No ³²
Texas	No	No	No	No	No	No
Utah	No	Yes	Yes	Yes	Yes	Yes
Vermont ³³	No	Yes	No Response	No Response	No	No
Virginia	No	No ³⁴	No ³⁵	No ³⁶	No ³⁷	No
West Virginia	Yes	Yes	No	No	No	No
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes

³⁰ TN: Answers given assume that the corporation has no other physical presence in Tennessee other than that allowed by P.L. 86-272.

³¹ TN: Answers given assume that the out-of-state corporation's receipts from Tennessee are less than \$500,000 or 25% of the out-of-state corporation's total receipts.

³² TN: *Id.*

³³ VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³⁴ VA: *See* 23 VAC 10-120-20(B)(2).

³⁵ VA: *Id.*

³⁶ VA: *Cf.* P.D. 08-63.

³⁷ VA: *See* 23 VAC 10-120-20(B)(2).

Nexus-Creating Activities: Financial Activities/Transactions (Part 2 of 2)

State ¹	Makes personal loans to 20 or more residents ²	Makes personal loans to 20 or more new residents ³	Makes car loans to 20 or more new residents ⁴	Sells debts ⁵	Forecloses on one parcel of real estate ⁶	Forecloses on several parcels of real estate ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	No	No	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes
California	Depends	No	No	Depends	Yes	Yes
Colorado	No	No	No	No	Yes ⁹	Yes ¹⁰
Connecticut ¹¹	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	No	Yes	Yes	No	Yes	Yes
District of Columbia	No	No	Yes	Yes	Yes	Yes
Florida	Yes	Yes	Yes	Yes	Yes	Yes ¹²
Georgia	No	No	Yes	Yes	Yes	Yes
Hawaii	Depends	Depends	Depends	Depends	Depends	Depends
Idaho	No	No	No	Yes ¹³	Yes	Yes
Illinois	No Response ¹⁴	No	No Response ¹⁵	No Response ¹⁶	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	No	No	Yes	Yes	Yes
Kentucky	No	No	No	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation makes personal loans to 20 or more residents of your state who traveled across the state border to obtain the loans.

³ The out-of-state corporation makes personal loans to 20 or more out-of-state residents who over a number of years subsequently move to your state.

⁴ The out-of-state corporation makes automobile loans to 20 or more out-of-state residents who over a number of years subsequently move to your state.

⁵ The out-of-state corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States (assume a few of the debtors and some of the property securing the loans are located in your state).

⁶ The out-of-state corporation forecloses on one parcel of real estate located in your state.

⁷ The out-of-state corporation forecloses on several parcels of real estate located in your state.

⁸ **AL: Factor presence nexus applies.**

⁹ CO: If meets nexus dollar or percentage threshold.

¹⁰ CO: *Id.*

¹¹ CT: *See Conn. Gen. Stat. § 12-216a; IP 2010(29.1).*

¹² FL: It depends upon the facts and circumstances.

¹³ ID: Depends on the facts and circumstances.

¹⁴ IL: Insufficient information.

¹⁵ IL: *Id.*

¹⁶ IL: *Id.*

State ¹	Makes personal loans to 20 or more residents ²	Makes personal loans to 20 or more new residents ³	Makes car loans to 20 or more new residents ⁴	Sells debts ⁵	Forecloses on one parcel of real estate ⁶	Forecloses on several parcels of real estate ⁷
Louisiana	No	No	No	No	No ¹⁷	Yes ¹⁸
Maine ¹⁹	No	No	No	Yes	Yes	Yes
Maryland	No	No	Yes	Yes	Yes	Yes
Massachusetts ²⁰	Yes	Yes	Yes	Yes	Yes	Yes
Michigan	No	No	No	No	Yes	Yes
Minnesota	Yes	No	No	No	No	No
Mississippi	Yes	Yes ²¹	Yes ²²	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	Yes ²³	Yes ²⁴	Yes	Yes	Yes	Yes
New Hampshire ²⁵	Depends	Depends	Depends	Depends	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City²⁶	No Response	No	No	No Response	Yes	Yes
North Carolina	No	No	No	No	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes
Oklahoma	No	No	No	No	Yes	Yes
Oregon	Yes	No	No	Yes	Yes	Yes
Pennsylvania	No	No	No	Depends	Yes	Yes
Rhode Island	No	No	No	No	Yes	Yes
South Carolina	No Response ²⁷	No ²⁸	No ²⁹	No ³⁰	No Response ³¹	Yes

¹⁷ LA: Unless the taxpayer is an organization described in LSR R.S. 12:302(k) and (l).

¹⁸ LA: *Id.*

¹⁹ ME: Depends on facts and circumstances. **All answers apply to Maine corporate income tax, not Maine franchise tax.**

²⁰ MA: *See* TIR's 95-6 & 00-6.

²¹ MS: The nexus would occur once the out-of-state residents move to MS.

²² MS: *Id.*

²³ NE: If the loan is secured by property in this state, there is nexus.

²⁴ NE: *Id.*

²⁵ NH: *See* RSA 77-A:1, XII.

²⁶ **NYC: *See* Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services. Pursuant to Administrative Code § 11-653(c) credit card companies with one thousand or more customers having a mailing address in New York City are subject to the business corporation tax regardless of whether the credit card company has a physical location in the city.**

²⁷ SC: No response, depends on facts that are not provided.

²⁸ SC: *See* S.C. Rev. Rul. No. 08-1 debt examples.

²⁹ SC: *Id.*

³⁰ SC: *Id.*

³¹ SC: No response, depends on facts that are not provided.

State ¹	Makes personal loans to 20 or more residents ²	Makes personal loans to 20 or more new residents ³	Makes car loans to 20 or more new residents ⁴	Sells debts ⁵	Forecloses on one parcel of real estate ⁶	Forecloses on several parcels of real estate ⁷
Tennessee	No ³²	No ³³	No ³⁴	No ³⁵	Yes ³⁶	Yes ³⁷
Texas	No	No	No	No	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ³⁸	No Response	No Response	No	No	Yes	Yes
Virginia	No	No	No	No ³⁹	Yes ⁴⁰	Yes ⁴¹
West Virginia	Yes	No	No	No	Yes	Yes
Wisconsin	Depends	Depends	Depends	Depends	Yes	Yes

³² TN: Answers given assume that the corporation has no other physical presence in Tennessee other than that allowed by P.L. 86-272.

³³ TN: *Id.*

³⁴ TN: *Id.*

³⁵ TN: *Id.*

³⁶ TN: Answers given assume that the foreclosure(s) involve in-state activities and physical presence by the corporation or its agent(s).

³⁷ TN: *Id.*

³⁸ VT: **All** nexus determinations depend on the totality of the circumstances. **Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.** Vermont follows PL 86-272.

³⁹ VA: *Cf.* P.D. 08-63.

⁴⁰ VA: Foreclosures that result in the corporation acquiring real or tangible personal property in Virginia would result in a positive property apportionment factor thereby creating nexus. *See* 23 VAC 10-120-20(B)(2).

⁴¹ VA: *Id.*

Nexus-Creating Activities: Transactions With In-State Printers

State ¹	Leases printing property ²	Owens raw material at printer ³	Makes quality control visits to printer ⁴
Alabama ⁵	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes
Arizona	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes
California	Yes	Yes	Yes
Colorado	Yes ⁶	Yes ⁷	No
Connecticut ⁸	No	No	No
Delaware	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes
Florida	Yes	Yes	Yes
Georgia ⁹	No	No	No
Hawaii	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
Illinois	No	No	No
Indiana	No	No	No
Iowa	Yes	Yes	Yes
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	No
Louisiana	Yes	Yes	Yes
Maine	Yes	Yes	Yes ¹⁰
Maryland	Yes	Yes	No
Massachusetts	Yes	Depends	Depends
Michigan	Yes	Yes	No
Minnesota	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation leases tangible personal property located at a printer in your state for use in connection with a printing contract (assume that once the work is complete, the printer ships the printed material out of your state for addressing and mailing).

³ The out-of-state corporation owns raw materials at an in-state printer.

⁴ The out-of-state corporation visits in-state printers for quality control purposes one to six times per year.

⁵ **AL: Factor presence nexus applies.**

⁶ CO: If meets nexus dollar or percentage threshold.

⁷ CO: *Id.*

⁸ CT: *See* Conn. Gen. Stat. § 12-213(a)(20)(B).

⁹ GA: A specific exemption applies pursuant to O.C.G.A. § 48-7-1(7.1).

¹⁰ ME: Generally; depends on facts and circumstances.

State ¹	Leases printing property ²	Owns raw material at printer ³	Makes quality control visits to printer ⁴
Mississippi	Yes	Yes	Yes
Missouri	Yes	Yes	No
Montana	Yes	Yes	Yes
Nebraska	Yes	Yes	No
New Hampshire	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes
New Mexico	Yes	Yes	No
New York City¹¹	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes ¹²
North Dakota	Yes	Yes	Yes
Oklahoma	No	No	No
Oregon	Yes	Yes	Yes
Pennsylvania ¹³	No	No	No
Rhode Island	Yes	Yes	Yes
South Carolina ¹⁴	No	No	No
Tennessee ¹⁵	No	No	No
Texas	Yes	Yes	Yes
Utah ¹⁶	No	No	No
Vermont ¹⁷	Yes	Yes	No
Virginia ¹⁸	No	No	No
West Virginia	No	No	No
Wisconsin	No	No	Yes

¹¹ NYC: See Title 19 of the Rules of the City of New York, Chapter 11, 11-01 to -06, and the amendments to that chapter made in 2002. Those amendments are available on our Web site but the entire chapter is only available through various legal research services.

¹² NC: Depends on whether this unprotected activity is performed systematically.

¹³ PA: See 72 P.S. § 10003.10.

¹⁴ SC: See SC Code Section 12-6-555.

¹⁵ TN: See Tenn. Code Ann. § 67-4-2004(14)(E)(ii) concerning doing business in Tennessee and contacts with Tennessee printers.

¹⁶ UT: Utah Code Annotated Section 59-7-102(2) expressly exempts entities that own printing materials or perform certain services at an in-state printer's facility.

¹⁷ VT: All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination. Vermont follows PL 86-272.

¹⁸ VA: See Va. Code § 58.1-401(7); P.D. 95-200.

Nexus-Creating Activities: Cloud Computing or Software as a Service (SaaS) Transactions

State ¹	Independent contractors perform services ²	Employees solicit business and sale is one of tangible property ³	Employees solicit business and sale is not one of tangible property ⁴	Customers with in-state billing addresses ⁵	Earns substantial revenue from in-state customers ⁶	Rents space on third party server ⁷
Alabama ⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	No Response ⁹	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	Yes	Yes	Yes
California	Yes	Not Applicable ¹⁰	Yes	Depends ¹¹	Depends ¹²	Depends ¹³
Colorado	Yes ¹⁴	No Response ¹⁵	Yes ¹⁶	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹
Connecticut ²⁰	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	Yes	No	Yes	No	No	Yes
District of Columbia	No	No	Yes	Yes	Yes	Yes
Florida	Yes	Yes ²¹	Yes	Yes	Yes	Yes
Georgia	Yes	No Response	Yes	No Response	No Response	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation provides access to its software to in-state customers and pays independent contractors to perform configuration/set-up services in the state.

³ The out-of-state corporation provides access to its software to in-state customers and has employees solicit business in the state (i.e., the sale IS one of tangible property protected under Pub. L. No. 86-272).

⁴ The out-of-state corporation provides access to its software to in-state customers and has employees solicit business in the state (i.e., the sale is NOT one of tangible property protected under Pub. L. No. 86-272).

⁵ The out-of-state corporation provides access to its software to in-state customers and lacks a physical presence in the state, but has a substantial number of customers with billing addresses in the state.

⁶ The out-of-state corporation provides access to its software to in-state customers and lacks a physical presence in the state, but earns a substantial amount of revenue from customers in the state.

⁷ The out-of-state corporation rents space on a third party server located in the state and lacks a physical presence in the state.

⁸ **AL: Nexus is determined by factor presence nexus and AL sources service income/intangible income via market based sourcing. Nexus is established if sales > \$500,000.**

⁹ AZ: Not yet determined.

¹⁰ CA: Depends on facts and circumstances (currently).

¹¹ CA: See also RTC §23101(b).

¹² CA: *Id.*

¹³ CA: This response assumes that the server is owned by a third party unrelated to the entity. See also RTC §23101(b).

¹⁴ CO: If meets nexus dollar or percentage threshold. Independent contractor treated as employee for payroll test.

¹⁵ CO: No determination yet.

¹⁶ CO: If meets nexus dollar or percentage threshold.

¹⁷ CO: No determination yet.

¹⁸ CO: *Id.*

¹⁹ CO: *Id.*

²⁰ CT: See Conn. Gen. Stat. §12-216a; IP 2010(29.1).

²¹ FL: Likely not considered tangible personal property.

State ¹	Independent contractors perform services ²	Employees solicit business and sale is one of tangible property ³	Employees solicit business and sale is not one of tangible property ⁴	Customers with in-state billing addresses ⁵	Earns substantial revenue from in-state customers ⁶	Rents space on third party server ⁷
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes ²²
Idaho ²³	No Response	No Response	No Response	No Response	No Response	No Response
Illinois	Yes	Yes	Yes	Yes	Yes	Yes
Indiana	Yes	No	Yes	Yes	Yes	Yes
Iowa ²⁴	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	Yes	No	Yes	No	No	Yes
Louisiana	Yes	No Response ²⁵	No Response ²⁶	No Response ²⁷	No Response ²⁸	Yes
Maine	Yes	Yes	Yes	No	No	Yes
Maryland	No ²⁹	Yes	No	No	No	Yes
Massachusetts ³⁰	Depends	Depends	Depends	Depends	Depends	Depends
Michigan	Yes	No	Yes	No ³¹	No ³²	Yes
Minnesota	Yes	No	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	Yes	Not Applicable ³³	Yes	No	No	Yes
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No Response	No	Yes	No	No	No Response
North Carolina	Yes	Yes ³⁴	Yes	Yes	Yes	Yes
North Dakota	Yes	No	Yes ³⁵	No	No	Yes

²² HI: Renting space on a third party server located in Hawaii state establishes physical presence.

²³ ID: The Tax Commission has made no ruling on this fact situation.

²⁴ IA: Physical presence not required for corporation income tax nexus per Iowa Supreme Court decision in KFC Corporation.

²⁵ LA: The department has no position on this issue at this time.

²⁶ LA: *Id.*

²⁷ LA: *Id.*

²⁸ LA: *Id.*

²⁹ MD: Only if configuration/set-up services involve minimal activity.

³⁰ MA: *See generally*, 830 CMR 64H.1.3.

³¹ MI: Unless software constitutes prewritten software located on a server located in Michigan. Also, these activities may constitute “active solicitation.” *See* MCL 206.621(1).

³² MI: *Id.*

³³ NE: Per Neb. Rev. Stat. §77-2734.04(2) and §77-2734.14(3)(b) SaaS is not a sale of TPP.

³⁴ NC: The answer depends on the facts. Because the employee will be soliciting orders for tangible personal property that is protected under Public Law 86-272, we will not subject the taxpayer to income tax unless there is a licensing agreement under which the taxpayer receives licensing fees for the access to the software.

³⁵ ND: **Response reflects that protections of PL 86-272 will not apply if it is determined to be other than tangible personal property.**

State ¹	Independent contractors perform services ²	Employees solicit business and sale is one of tangible property ³	Employees solicit business and sale is not one of tangible property ⁴	Customers with in-state billing addresses ⁵	Earns substantial revenue from in-state customers ⁶	Rents space on third party server ⁷
Oklahoma ³⁶	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	No Response ³⁷	No Response ³⁸	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	No Response	No Response	Yes	Yes	No Response
Tennessee	Yes ³⁹	Yes	Yes	Yes ⁴⁰	Yes ⁴¹	Yes ⁴²
Texas	Yes	Yes	Yes	No	No	No
Utah	Yes	No	Yes	Yes	Yes	Depends ⁴³
Vermont	Yes	No	Yes	Yes	Yes	No Response ⁴⁴
Virginia ⁴⁵	No ⁴⁶	No	Yes ⁴⁷	No ⁴⁸	No	No ⁴⁹
West Virginia	No	No	No	No	No	No
Wisconsin ⁵⁰	Yes	Yes	Yes	Yes	Yes	Yes

³⁶ OK: Policy not yet developed.

³⁷ PA: Undetermined.

³⁸ PA: *Id.*

³⁹ TN: Answer given assumes the existence of an agency relationship between the principal and the third party located in Tennessee. Although the facts state that the third parties are “independent,” it appears that there is probably an agency relationship that would create tax nexus for the principal.

⁴⁰ TN: Answers assume the out-of-states total receipts in Tennessee exceed \$500,000 or are at least 25% of the out-of-state corporation’s total receipts everywhere.

⁴¹ TN: *Id.*

⁴² TN: Tennessee views renting and using servers in this state as establishing physical presence.

⁴³ UT: Answer would depend on whether amount of activity including sales activity into the state exceeds de minimis.

⁴⁴ VT: The consideration of the full set of circumstances is necessary for the determination of nexus.

⁴⁵ VA: The Department has never ruled specifically on the corporate income tax implications of cloud computing or SaaS transactions. Accordingly, the responses above are based on current Department policy regarding software services.

⁴⁶ VA: *See* P.D. 01-173.

⁴⁷ VA: Virginia extends the “solicitation test” to sales of intangibles, but certain activities, such as configuration and setup by employees, exceed solicitation. *See* P.D. 98-176.

⁴⁸ VA: *See* P.D. 01-136 and P.D. 04-173.

⁴⁹ VA: *See* P.D. 05-128.

⁵⁰ WI: The licensing of intangible rights for use in Wisconsin creates nexus. *See* section Tax 2.82(4)(a)9. & 2.82(4)(b)5., Wis. Adm. Code (May 2015 Register).

Nexus-Creating Activities: Internet-Based Activities

State ¹	Owns Internet server ²	Owns Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use) ⁴	Leases space on third-party's Internet server (shared use) ⁵	Leases space on third-party's network of Internet servers (less than 6 months) ⁶	Leases space on third-party's network of Internet servers (more than 6 months) ⁷	Paid web-hosting provider with server ⁸
Alabama ⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska ¹⁰	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	No
Arkansas ¹¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California ¹²	Yes	Yes	Yes	No	No	No	Depends
Colorado ¹³	Yes ¹⁴	Yes ¹⁵	Yes ¹⁶	Yes ¹⁷	Yes ¹⁸	Yes ¹⁹	No Response ²⁰
Connecticut	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Delaware	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida ²¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia ²²	Yes	Yes	Yes	Yes	Yes	Yes	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH did not participate in this portion of the survey.

² The out-of-state corporation owns an Internet server located in your state.

³ The out-of-state corporation owns an Internet server located in your state and hires third-party technicians located in your state to keep the server functioning.

⁴ The out-of-state corporation leases a third-party's Internet server located in your state. Assume that the server is used exclusively by the corporation.

⁵ The out-of-state corporation leases space on a third-party's Internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.

⁶ The out-of-state corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server in your state for less than six months during the year.

⁷ The out-of-state corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server for more than six months during the year.

⁸ The out-of-state corporation does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the corporation web services to sell products over the Internet.

⁹ **AL: Out of state corporation must be making sales into AL or have other AL activity exceeding factor presence nexus thresholds.**

¹⁰ AK: The answers do not depend on whether the out-of-state corporation made sales into Alaska.

¹¹ AR: The answers do not depend on whether the corporation made sales into Arkansas.

¹² CA: The answers do not depend on whether the corporation made sales into this state, and are subject to change based on additional facts and circumstances.

¹³ **CO: Does not depend on whether sales made into state.**

¹⁴ CO: If meets nexus dollar or percentage threshold.

¹⁵ CO: *Id.*

¹⁶ CO: *Id.*

¹⁷ CO: *Id.*

¹⁸ CO: *Id.*

¹⁹ CO: *Id.*

²⁰ CO: No determination yet.

²¹ FL: The answers do not depend on whether the corporation made sales into the state.

²² GA: The answers do not depend on whether the corporation made sales into the state.

State ¹	Owns Internet server ²	Owns Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use) ⁴	Leases space on third-party's Internet server (shared use) ⁵	Leases space on third-party's network of Internet servers (less than 6 months) ⁶	Leases space on third-party's network of Internet servers (more than 6 months) ⁷	Paid web-hosting provider with server ⁸
Hawaii ²³	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	No Response ²⁴	No Response ²⁵	No Response ²⁶	No Response ²⁷
Illinois	Yes	Yes	Yes	No Response ²⁸	No Response ²⁹	No Response ³⁰	No
Indiana ³¹	Yes	Yes	Yes	Yes	No	No	No
Iowa ³²	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	No
Kentucky ³³	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana ³⁴	Yes	Yes	Yes	Yes	Yes	Yes	No Response ³⁵
Maine ³⁶	Yes	Yes	Yes	Yes	No Response ³⁷	No Response ³⁸	No Response ³⁹
Maryland ⁴⁰	Yes	Yes	Yes	Yes	Yes	Yes	No
Massachusetts ⁴¹	Yes	Yes	Depends	Depends	Depends	Depends	No
Michigan ⁴²	Yes	Yes	Yes	Yes	Yes	Yes	Yes ⁴³
Minnesota ⁴⁴	Yes	Yes	Yes	No Response	No Response	No Response	No Response
Mississippi ⁴⁵	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	No ⁴⁶

²³ HI: These activities create nexus for Hawaii and, if the corporation made sales into Hawaii, it will be subject to tax.

²⁴ ID: The Tax Commission has made no ruling on this fact situation.

²⁵ ID: *Id.*

²⁶ ID: *Id.*

²⁷ ID: *Id.*

²⁸ IL: Not enough information.

²⁹ IL: *Id.*

³⁰ IL: *Id.*

³¹ IN: No, the answers do not depend on whether the out-of-state corporation made sales into Indiana.

³² IA: Physical presence not required for corporation income tax nexus per Iowa Supreme Court decision in KFC Corporation. Answers do not depend on whether the out-of-state corporation made sales into Iowa.

³³ KY: It does not depend on whether the out-of-state corporation made sales into this state.

³⁴ LA: Answers do not depend on sales made into our state.

³⁵ LA: The department has no position on this issue at this time.

³⁶ ME: No, [the answers do not depend on whether the out-of-state corporation made sales into the state.]

³⁷ ME: Would need more info to make a nexus determination.

³⁸ ME: *Id.*

³⁹ ME: *Id.*

⁴⁰ MD: Answers do not depend on whether the corporation made sales into Maryland.

⁴¹ MA: The answers do not depend on whether the corporation made sales into the state.

⁴² MI: No, answers do not depend on whether corporation made sales into Michigan.

⁴³ MI: If web services constitute "active solicitation" and taxpayer has \$350,000 or more in gross receipts sourced to Michigan. See MCL 206.621(1).

⁴⁴ MN: These answers do not depend on whether the corporation made sales into the state. The answers depend on whether the corporation is leasing property in the state and is not based on a service performed in the state which is received by the corporation outside the state.

⁴⁵ MS: **The answers are not dependent on the whether the out-of-state corporation made sales into Mississippi.**

⁴⁶ NE: Assuming the web-hosting provider is not an agent or representative of the out-of-state corporation.

State ¹	Owns Internet server ²	Owns Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use) ⁴	Leases space on third-party's Internet server (shared use) ⁵	Leases space on third-party's network of Internet servers (less than 6 months) ⁶	Leases space on third-party's network of Internet servers (more than 6 months) ⁷	Paid web-hosting provider with server ⁸
New Hampshire ⁴⁷	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey ⁴⁸	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No Response	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina ⁴⁹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota ⁵⁰	Yes	Yes	Yes	Yes	Yes	Yes	No
Oklahoma ⁵¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ⁵²	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island ⁵³	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Carolina	Yes	No Response	No Response	No Response	No Response	No Response	No Response
Tennessee	Yes ⁵⁴	Yes ⁵⁵	Yes ⁵⁶	Yes ⁵⁷	Yes ⁵⁸	Yes ⁵⁹	Yes ⁶⁰
Texas ⁶¹	Yes	Yes	Yes	No	No	No	No
Utah ⁶²	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ⁶³	No Response	No Response	No Response	No Response	No Response	No Response	No
Virginia ⁶⁴	Yes ⁶⁵	Yes ⁶⁶	No	No	No	No	No
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin ⁶⁷	Yes	Yes	Yes	Depends	Depends	Depends	No

⁴⁷ NH: The answers would not be different [regardless of whether the corporation made sales into the state.]

⁴⁸ NJ: The answer does not depend on whether the out of state company made sales into the State.

⁴⁹ NC: The answers provided do not depend on whether the company has sales in North Carolina.

⁵⁰ ND: None of the answers were dependent on whether sales were made into the state.

⁵¹ OK: Policy not yet developed.

⁵² OR: Answers wouldn't change based on sales into Oregon.

⁵³ RI: Answer is the same irregardless of whether or not the out of state corporation made in-state sales.

⁵⁴ TN: The corporation owns or leases income producing property in Tennessee which creates franchise, excise tax nexus in Tennessee regardless of whether the corporation makes Tennessee sales.

⁵⁵ TN: *Id.*

⁵⁶ TN: *Id.*

⁵⁷ TN: *Id.*

⁵⁸ TN: *Id.*

⁵⁹ TN: *Id.*

⁶⁰ TN: The corporation is conducting business in Tennessee through a web-hosting provider which creates nexus in Tennessee regardless of whether the corporation makes Tennessee sales.

⁶¹ TX: The answers to these questions do not depend on whether the corporation makes sales into Texas.

⁶² UT: Answer would be affected by whether the corporation made sales into the state as well as whether the server related operations exceeded a de minimis level.

⁶³ **VT: Pursuant to 32 V.S.A. § 5811(15)(C)(ii), certain activities that are necessary to create or maintain a Worldwide Web page or Internet site for the corporation do not create nexus. All nexus determinations depend on the totality of the circumstances. Factual assumptions were made when providing these answers. The response was left blank if more information was needed to make a determination.**

⁶⁴ VA: Answers to the questions do not depend on whether the out-of-state corporation made sales in Virginia. Nexus requires at least one positive apportionment factor. Accordingly, the out-of-state corporation could still have nexus if it had a positive property or payroll factor.

⁶⁵ VA: See P.D. 05-128.

⁶⁶ VA: See P.D. 12-36.

⁶⁷ WI: No, the answers do not depend on whether the out-of-state corporation made sales in Wisconsin.

State Tax Addbacks

Addition Modification Requirements for Income-Based Taxes and Gross Receipts Taxes Vary Among States

In most states, the computation of taxable corporate income begins with either federal taxable income before net operating losses and special deductions (*i.e.*, federal Form 1120, line 28) or federal taxable income after net operating losses and special deductions (*i.e.*, federal Form 1120, line 30). Several states, however, do not use federal taxable income as a starting point and instead require taxpayers to separately compute state taxable income using principles similar to those employed in computing federal taxable income.

States that use federal taxable income as a starting point often require taxpayers to make a number of modifications to arrive at their state taxable income. Examples of these modifications include the addition of state and local interest income exempt from tax at the federal level, the income-based taxes deducted in computing federal taxable income, the federal net operating loss deduction and the federal dividends received deduction.

These modifications vary by state, however, and are often subject to the policy interpretations of state tax departments.

States Require Addback for Taxes Paid

A significant number of states disallow deductions for income-based taxes imposed by states or localities, even though such taxes are generally deductible for federal purposes. In other words, these states require nondeductible state and local taxes to be added back to federal taxable income in the computation of state taxable income. While some states do not allow a deduction for any income-based state or local tax, other states only disallow income-based taxes paid to their own state.

State tax practitioners must understand the differences between state laws in determining the deductibility of state and local taxes. Moreover, practitioners must know when a state determines another state's corporate tax to be "income based." Because some state corporate taxes (*e.g.*, the Texas Franchise Tax) have an income component, but are not entirely based on income, the determination of whether the tax is based on income varies among the states.

Bloomberg BNA Survey Offers Clarity, Identifies Addbacks

Income-Based Taxes

We asked the states a variety of questions about what taxes they allow or disallow as deductions in arriving at their corporate income-based tax. This year, only three states, Georgia, Hawaii and Nebraska, indicated that they allow a deduction for income-based taxes imposed by their state. Delaware changed its response this year, noting that the corporate return requires an addback "for all state and local income taxes paid." Ten states indicated they allow a deduction for income-based taxes imposed by another state.

State-Specific Taxes

We also asked the states about their treatment of deductions for specific taxes imposed by other states. The states' varied responses highlight the confusion that surrounds taxes that are not purely based on income. For example, Kentucky indicated that it does not require an addback for gross receipts taxes. However, the state responded that they require an addback for the Ohio Commercial Activity Tax and the Washington Business and Occupation Tax, which are both taxes measured according to gross receipts.

We asked the states additional questions about state tax addbacks, and their answers are presented in the charts on the following pages.

For more information, see:
Corporate Income Tax Navigator at 5.3.
I.R.C. Conformity Chart Builder

State Tax Addbacks (Part 1 of 2)

State ¹	State tax imposed by your state ²	State tax imposed by other states ³	In-state local taxes ⁴	Out-of-state local taxes ⁵	Foreign taxes ⁶	Franchise taxes ⁷	Gross receipts taxes ⁸
Alabama	Yes	Yes	Yes	Yes	Yes	No	No
Alaska	Yes	Yes	Yes	Yes	Yes ⁹	No	No
Arizona	Yes	Yes	Yes	Yes	Yes ¹⁰	No	No
Arkansas	Yes	No	Yes	No	No	No	No
California	Yes	Yes	Yes	Yes	Yes ¹¹	No	No
Colorado	Yes	No	Not Applicable	No	Yes ¹²	No	No
Connecticut	Yes	Yes	Yes	Yes	No Response ¹³	No Response ¹⁴	No Response ¹⁵
Delaware ¹⁶	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes	Yes	No	No
Florida ¹⁷	Yes	Yes	No	No	No	No	No
Georgia	No	Yes	Yes	Yes	Yes	No	No
Hawaii	No	No	No	No	No	No	No
Idaho ¹⁸	Yes	Yes	Yes	Yes	No	No	No
Illinois	Yes	No	No	No	No	No	No
Indiana	Yes	Yes	No Response ¹⁹	No	No	No	Yes
Iowa	Yes	No	No	No	No ²⁰	No	No
Kansas	Yes	Yes	Yes	Yes	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² State income-based taxes imposed by your state.

³ State income-based taxes imposed by other states.

⁴ Local income-based taxes imposed by in-state local governments.

⁵ Local income-based taxes imposed by out-of-state local governments.

⁶ Foreign taxes (other countries).

⁷ State franchise taxes based on capital stock or net worth.

⁸ State gross receipts taxes.

⁹ AK: If based on or measured by net income.

¹⁰ AZ: Foreign taxes are added back if they are based on income and deducted in computing federal taxable income.

¹¹ CA: Disallowed to the extent the tax is based on income. However, under Reg. 24345-7, foreign taxes are presumed to be based on income.

¹² CO: Allowed if taken as a deduction on federal income tax return. (If taken as a credit, see 39-22-303(10)(a) & (b) CRS.)

¹³ CT: See Conn. Gen. Stat. § 12-217(a)(1)(A)(i).

¹⁴ CT: *Id.*

¹⁵ CT: *Id.*

¹⁶ DE: The Delaware Corporate return requires an add back on line 4(a) for all state and local income taxes paid.

¹⁷ FL: See Rule 12C-1.013(5), F.A.C.

¹⁸ ID: See Idaho code section 63-3022(a), "Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income..."

¹⁹ IN: None exist.

²⁰ IA: Foreign tax deduction allowed only if deduction allowed for federal tax purposes.

State ¹	State tax imposed by your state ²	State tax imposed by other states ³	In-state local taxes ⁴	Out-of-state local taxes ⁵	Foreign taxes ⁶	Franchise taxes ⁷	Gross receipts taxes ⁸
Kentucky	Yes	Yes	No	No	Yes	No	No
Louisiana ²¹	Yes	No	No	No	No	No	No
Maine	Yes	Yes	No	No	Yes	No	No
Maryland	Yes ²²	Yes ²³	Yes ²⁴	Yes ²⁵	No	No	No
Massachusetts ²⁶	Depends	Depends	Depends	Depends	Depends	Depends	Yes
Michigan	Yes	Yes	Yes	Yes	Yes ²⁷	Yes	No
Minnesota	Yes	Yes	Yes	Yes	Yes	No	No
Mississippi	Yes	Yes	Yes	Yes	Yes	No	No
Missouri	Yes	Yes	Yes	Yes	No	No	No
Montana	Yes	Yes	Yes	Yes	Yes	No	No
Nebraska ²⁸	No	No	No	No	No	No	No
New Hampshire	Yes	Yes	Yes	Yes	Yes	No	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes ²⁹	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City	No Response	No	No	No	No Response	Yes	Yes
North Carolina	Yes	Yes	Yes	Yes	No	No	No
North Dakota	Yes	Yes	Yes	Yes	Yes	No	No
Oklahoma	Yes	Yes	Yes	Yes	No	No	No
Oregon	Yes	Yes	No	No	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes ³⁰	No	No
Rhode Island	No Response	No	No	No	No	No	No
Tennessee ³¹	Yes ³²	No	No	No	No	No	No
Texas ³³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Utah	Yes	Yes	No	No	Yes	Yes	Yes

²¹ LA: Taxes allowed as a deduction for Louisiana are the same as for federal except income based taxes imposed by Louisiana. See Revised Statute 47:287.73.

²² MD: Add-back required for any tax based on net income that is imposed by any state or by a political subdivision of any state.

²³ MD: *Id.*

²⁴ MD: *Id.*

²⁵ MD: *Id.*

²⁶ MA: See DD 99-9. Pursuant to G.L. c. 63, s. 30(4)(iii) in determining a corporation's net income, a deduction is not allowed for "taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by any state."

²⁷ MI: Foreign income taxes.

²⁸ NE: Nebraska allows [a deduction] up to the amount allowed on the corporation's federal return.

²⁹ NJ: But see *PPL Electric Utilities Corporation v. Director, Division of Taxation*, 000005-2011 (NJ Tax 2014) for an exception.

³⁰ PA: Disallow deduction for income tax.

³¹ TN: All answers assume that the tax at issue is deductible when computing federal net earnings before the NOL and special deductions. If the tax is not deductible for federal purposes, it is not deductible for Tennessee excise tax purposes.

³² TN: Assumes that the only state income-based tax is the Tennessee excise tax.

³³ TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. See Texas Tax Code § 171.1011. There is no statutory exclusion for the taxes listed. Thus, the taxes listed are not allowed as deductions in computing margin.

State¹	State tax imposed by your state²	State tax imposed by other states³	In-state local taxes⁴	Out-of-state local taxes⁵	Foreign taxes⁶	Franchise taxes⁷	Gross receipts taxes⁸
Vermont	Yes	Yes	Yes	Yes	No Response	Yes	No Response
Virginia	Yes	Yes	Yes	Yes	Yes ³⁴	No	No
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	No	No	Yes ³⁵	Yes	Yes

³⁴ VA: Foreign taxes must be added back if they are measured by net income or net profits.

³⁵ WI: Foreign taxes are not deductible unless the income on which the tax is based is taxable by Wisconsin.

State Tax Addbacks (Part 2 of 2)

State ¹	District of Columbia UBT ²	Kentucky license tax ³	New Hampshire business profits tax ⁴	Washington B&O tax ⁵	West Virginia B&O tax ⁶	New York City UBT ⁷	Ohio CAT ⁸	Texas Franchise Tax ⁹
Alabama	No	No	Yes	No	Yes	Yes	No	No
Alaska	Yes	No Response ¹⁰	Yes	No Response ¹¹	No Response ¹²	No Response ¹³	No Response ¹⁴	Yes ¹⁵
Arizona	Yes	No	No	No	No	Yes	No	Yes ¹⁶
Arkansas	No	No	No	No	No	No	No	No
California	Yes	No	Yes ¹⁷	No	No ¹⁸	Yes	No	Yes ¹⁹
Colorado	No	No	No	No	No	No	No	No
Connecticut ²⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	Yes ²¹	Yes ²²	Yes ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes	Yes
District of Columbia	Yes	Yes	Yes	No	No ²⁷	Yes	Yes ²⁸	No ²⁹

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² District of Columbia unincorporated business tax.

³ Kentucky license tax.

⁴ New Hampshire business profits tax.

⁵ Washington business and occupation tax.

⁶ West Virginia business and occupation tax.

⁷ New York City unincorporated business tax.

⁸ Your state requires the add-back (*i.e.*, Ohio Commercial Activity Tax (CAT))

⁹ Your state requires the add-back (*i.e.*, revised Texas Franchise Tax)

¹⁰ AK: Alaska has not recently evaluated the statutes of these specific states and doesn't know if changes have been made to the statutes governing these tax types. All taxes based on or measured by net income are disallowed as a deduction.

¹¹ AK: *Id.*

¹² AK: *Id.*

¹³ AK: *Id.*

¹⁴ AK: Alaska has not recently evaluated the statutes of this specific state's tax and cannot provide a response at this time.

¹⁵ AK: To the extent based on or measured by net income.

¹⁶ AZ: Appears to be based on income.

¹⁷ CA: Deduction allowed to the extent there is a return of capital in the form of labor cost of goods sold. *See* FTB Notice 94-4.

¹⁸ CA: Disallowed to the extent based on income.

¹⁹ CA: Deduction disallowed to the extent the tax is based on income.

²⁰ CT: *See* Conn. Gen. Stat. § 12-217(a)(1)(A)(i).

²¹ **DE: The Delaware Corporate return requires an add back on line 4(a) for all state and local income taxes paid.**

²² **DE: *Id.***

²³ **DE: *Id.***

²⁴ **DE: *Id.***

²⁵ **DE: *Id.***

²⁶ **DE: *Id.***

²⁷ DC: Allowed if not measured on net income.

²⁸ DC: Provided that it is not measured by the net income.

²⁹ DC: Because our understanding is that it is not measured by net income.

State ¹	District of Columbia UBT ²	Kentucky license tax ³	New Hampshire business profits tax ⁴	Washington B&O tax ⁵	West Virginia B&O tax ⁶	New York City UBT ⁷	Ohio CAT ⁸	Texas Franchise Tax ⁹
Florida	No ³⁰	No ³¹	Yes ³²	No ³³	No ³⁴	No ³⁵	No	Yes
Georgia	No Response	No	Yes	No	No	No Response	No	Yes
Hawaii	No	No	No	No	No	No	No	No
Idaho	Yes ³⁶	No ³⁷	Yes ³⁸	No ³⁹	No ⁴⁰	Yes ⁴¹	No	No Response ⁴²
Illinois	No	No	No	No	No	No	No	No
Indiana	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	No	No	No	No	No	No	No	No
Kansas	No	No	No	No	No	Yes	Yes ⁴³	Yes ⁴⁴
Kentucky	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	No	No	No	No	No	No	No	No
Maine	Yes	No	Yes	No	No	Yes	No	No Response ⁴⁵
Maryland	Yes ⁴⁶	No	Yes	No ⁴⁷	No	Yes	No	Yes
Massachusetts	Yes ⁴⁸	Yes ⁴⁹	Yes ⁵⁰	Yes ⁵¹	Yes ⁵²	Depends ⁵³	Yes	Yes
Michigan	Yes	No	No	No	No	No Response ⁵⁴	No	No
Minnesota	No	No	No	No	No	Yes	No	No Response ⁵⁵

³⁰ FL: See Rule 12C-1.013(5), F.A.C.

³¹ FL: *Id.*

³² FL: *Id.*

³³ FL: *Id.*

³⁴ FL: *Id.*

³⁵ FL: *Id.*

³⁶ ID: See Idaho code section 63-3022(a), "Add any state and local taxes, as defined in section 164 of the Internal Revenue Code that are measured by net income..."

³⁷ ID: *Id.*

³⁸ ID: *Id.*

³⁹ ID: *Id.*

⁴⁰ ID: *Id.*

⁴¹ ID: *Id.*

⁴² ID: In 2012, legislation was passed amending the language contained within section 63-3029, Idaho Code, which would treat certain of the Texas Margins Tax calculations as a creditable tax. See Section 63-3029(8), Idaho Code. In 2013, legislation was passed that requires a creditable tax to be added back when calculating Idaho Taxable Income. See Section 63-3022(a).

⁴³ KS: We are not very familiar with this tax but believe a portion of it is based on income. If so, an add-back would be required as to at least that portion.

⁴⁴ KS: *Id.*

⁴⁵ ME: Deduction is allowed for gross receipts portion; net income portion must be added back. To the extent claimed federally, Maine does not require the addition of the Texas Franchise Tax.

⁴⁶ MD: Add-back required for any tax based on net income that is imposed by any state or by a political subdivision of any state.

⁴⁷ MD: *Id.*

⁴⁸ MA: See DD 99-9. Pursuant to G.L. c. 63, s. 30(4)(iii) in determining a corporation's net income, a deduction is not allowed for "taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by any state."

⁴⁹ MA: *Id.*

⁵⁰ MA: *Id.*

⁵¹ MA: *Id.*

⁵² MA: *Id.*

⁵³ MA: *Id.*

⁵⁴ MI: Policy under review.

⁵⁵ MN: For corporations, Minnesota Statutes, section 290.01, subdivision 19c(1), requires an addition to federal taxable income for "taxes based on net income" paid by a corporation to another state, a political subdivision of another state, the District of Columbia, or any foreign country or possession of the United States. Under Texas Tax Code, section 171.101, starting in 2007, Texas

State ¹	District of Columbia UBT ²	Kentucky license tax ³	New Hampshire business profits tax ⁴	Washington B&O tax ⁵	West Virginia B&O tax ⁶	New York City UBT ⁷	Ohio CAT ⁸	Texas Franchise Tax ⁹
Mississippi	No	No	Yes	No	No	No	No Response	Yes ⁵⁶
Missouri	No	No	No	No	No	No	No	Yes
Montana ⁵⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	No ⁵⁸	No ⁵⁹	No ⁶⁰	No ⁶¹	No ⁶²	No ⁶³	No ⁶⁴	No ⁶⁵
New Hampshire	No	No Response ⁶⁶	Yes	No	No	Yes	No	No
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	No	No
New York City	No Response	No Response	No Response	No Response	No Response	Yes	No Response	No Response
North Carolina	Yes	No	No	No	No	Yes	No	No
North Dakota	No	No	No	No	No	Yes	No	No Response ⁶⁷
Oklahoma	Yes	Yes	Yes	Yes	Yes	No Response	Yes	Yes
Oregon	No	No	Yes	No	No	No Response ⁶⁸	No	Depends ⁶⁹
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	No	No
Rhode Island	No	No	No	No	No	No	No	No
Tennessee	No ⁷⁰	No ⁷¹	No ⁷²	No ⁷³	No ⁷⁴	No ⁷⁵	No ⁷⁶	No ⁷⁷

imposed a “business margin tax” on the lesser of 70 percent of business gross receipts or business gross receipts less deductions. Although the latter calculation provides some deductions for compensation and cost-of-goods sold, it does not provide other deductions, such as interest, depreciation, and most other business expenses generally associated with a computation of net income. It is the department’s position that the Texas business margin tax is not a tax based on net income.

⁵⁶ MS: The Texas Margin Tax is considered a state tax based on income and is required to be added back.

⁵⁷ MT: Deduction of taxes are disallowed to the extent the tax is on or measured by net income or profits.

⁵⁸ NE: Nebraska allows [a deduction] up to the amount allowed on the corporation’s federal return.

⁵⁹ NE: *Id.*

⁶⁰ NE: *Id.*

⁶¹ NE: *Id.*

⁶² NE: *Id.*

⁶³ NE: *Id.*

⁶⁴ NE: Nebraska allows the deduction of the tax up to the amount allowed on the federal return.

⁶⁵ NE: *Id.*

⁶⁶ NH: Unable to answer unless broken down.

⁶⁷ ND: No, to the extent the tax is calculated on total revenue. Yes to the extent the amount represents a net income.

⁶⁸ OR: Oregon does not allow a deduction for any taxes upon or measured by net income or profits that is imposed by any foreign country or any state or territory (see ORS 317.314). Oregon is evaluating whether this falls within the provisions.

⁶⁹ OR: Oregon is currently evaluating whether Texas Margin Tax falls within add-back provisions of ORS 317.314.

⁷⁰ TN: Answer assumes that the tax at issue is deductible when computing federal net earnings before the NOL and special deductions. If the tax is not deductible for federal purposes, it is not deductible for Tennessee excise tax purposes.

⁷¹ TN: *Id.*

⁷² TN: *Id.*

⁷³ TN: *Id.*

⁷⁴ TN: *Id.*

⁷⁵ TN: *Id.*

⁷⁶ TN: Answer assumes that the tax is deductible in determining federal net earnings before the net operating loss deduction and special deductions.

⁷⁷ TN: *Id.*

State ¹	District of Columbia UBT ²	Kentucky license tax ³	New Hampshire business profits tax ⁴	Washington B&O tax ⁵	West Virginia B&O tax ⁶	New York City UBT ⁷	Ohio CAT ⁸	Texas Franchise Tax ⁹
Texas	No Response ⁷⁸	No Response ⁷⁹	No Response ⁸⁰	No Response ⁸¹	No Response ⁸²	No Response ⁸³	No Response ⁸⁴	No Response ⁸⁵
Utah	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Vermont	Yes	No Response	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	Yes	No	Yes	No	No	Yes	Not Applicable	No ⁸⁶
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Wisconsin	Yes	Yes	Yes	No	No ⁸⁷	Yes	No ⁸⁸	Yes

⁷⁸ TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. See Tex. Tax Code §171.1011. There is no statutory exclusion for the taxes listed. Thus, the taxes listed are not allowed as deductions in computing margin.

⁷⁹ TX: *Id.*

⁸⁰ TX: *Id.*

⁸¹ TX: *Id.*

⁸² TX: *Id.*

⁸³ TX: *Id.*

⁸⁴ TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. See Texas Tax Code §171.1011. There is no statutory exclusion for the Ohio CAT. Thus, the tax is not allowed as a deduction in computing margin.

⁸⁵ TX: The starting point for the computation of margin is a taxable entity's total revenue. Total revenue is determined based on revenue amounts reported for federal income tax minus statutory exclusions. See Texas Tax Code §171.1011. There is no statutory exclusion for the Texas Margin Tax. Thus, the tax is not allowed as a deduction in computing margin.

⁸⁶ VA: See P.D. 08-169.

⁸⁷ WI: If the expenditure is capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.

⁸⁸ WI: However, if the expenditure is capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.

338(h)(10) Elections

Majority Of States Conform to Federal Treatment of I.R.C. § 338(h)(10) Election

In an I.R.C. § 338 transaction, a target corporation is treated as if it sells its own assets to itself, as a new corporation, in a taxable transaction and is then liquidated. If a regular I.R.C. § 338 election is made, the tax is borne by the buyer because the taxable transaction occurs after the target leaves the seller's control. In contrast, if an I.R.C. § 338(h)(10) election is made, the liability is borne by the selling consolidated group. This difference would appear at first glance to be significant but, in fact, the parties are aware of the differences and the tax burden becomes part of the overall price that is subject to negotiation.

I.R.C. § 338(h)(10) Elections Retain Usefulness

An I.R.C. § 338(h)(10) election can be an effective tax planning technique. In an I.R.C. § 338(h)(10) transaction, tax is only imposed on the target's deemed sale of its assets while a member of the selling parent's consolidated group. The deemed liquidation of the target is tax free under I.R.C. § 332, and the parent's gain or loss on the sale of the target's stock is disregarded for tax purposes.

Although in theory the values reflected by any appreciation in the target's assets will eventually be taxed when the parent is liquidated or sold, this may not happen for a long time and the double tax may be more of an abstraction than a practical reality.

If a parent corporation sells a subsidiary's stock and an I.R.C. § 338(h)(10) election is not made, its gain or loss will depend on the difference between the sales price and its adjusted basis in the subsidiary's stock. If an I.R.C. § 338(h)(10) election is made, the parent's taxable gain will be a function of the difference between the sale price and the target's basis in its assets. Thus, the desirability of making an I.R.C. § 338(h)(10) election for the parent will depend on the relative bases of the subsidiary's stock and assets.

Even if the basis of the stock is higher than the basis of the assets so that an I.R.C. § 338(h)(10) election is not desirable for the selling parent, the buyer may be willing to pay a higher price if the I.R.C. § 338(h)(10) election is made because the buyer stands to gain significant tax benefits from stepping up the basis of a subsidiary's assets. I.R.C. § 338(h)(10) transactions are therefore still common, although straight I.R.C. § 338 transactions are rare.

An I.R.C. § 338(h)(10) election at the federal level raises issues at the state level, beginning with whether the state conforms to the federal election and whether such conformity is mandatory. If the state does permit an I.R.C. § 338(h)(10) election, taxpayers must understand the state's treatment of the gain and how the gross proceeds from the deemed sale will affect the apportionment factors.

State Conformity and Election Requirements

The vast majority of states indicated in the survey that they conform to the federal treatment of I.R.C. § 338(h)(10) for both C corporations and S corporations. However, the District of Columbia, New Jersey, New York City, Pennsylvania and Tennessee said that, although they conform to the federal treatment for C corporations, they do not conform for S corporations. Alaska indicated that the state generally conforms to the federal rules but has some distinctions related to the treatment of property values when computing the apportionment formula. Most states do not require a separate election to be made at the state level; Arkansas and Hawaii are notable exceptions.

Most states also require an entity that makes a federal I.R.C. § 338(h)(10) election to use that same election when calculating state tax liability. Arkansas and Wisconsin are the only states that allow entities to take different positions on their federal and state tax returns for I.R.C. § 338(h)(10) purposes.

For more information, see:

Corporate Income Tax Navigator at 11.5.

Portfolio 1140-2nd: Income Taxes: The Distinction Between Business and Nonbusiness Income at 1140.06.B.7.

I.R.C. Conformity Chart Builder

Allocation and Apportionment of I.R.C. § 338(h)(10) Gain

States were asked to classify I.R.C. § 338(h)(10) gain as apportionable business income or allocable nonbusiness income. Twenty-two states indicated that gain would be apportionable business income. Only two states, Missouri and West Virginia, reported that gain would be classified as allocable nonbusiness income. Nineteen states indicated that treatment of the gain would depend on the facts and circumstances of the transaction.

We also asked states if they required gain to be apportioned and, if so, to identify the method used. Of the 35 states indicating that gain must be apportioned, all but five states said that gain was apportioned using the short-period apportionment factors. Florida and Tennessee are among these five states, and both indicated that the short-period apportionment factors could be used provided they are consistent with historical factors and do not cause a distortion in income reported.

Bloomberg BNA asked additional questions about states' treatment of I.R.C. § 338(h)(10), and their answers appear in the charts on the following pages.

I.R.C. § 338(h)(10) Elections: Conformity to the Election and Treatment

State ¹	State conforms to federal treatment for C corporations ²	State conforms to federal treatment for S corporations ³	State requires separate election ⁴	Taxpayer can make federal but not state election ⁵	Taxpayer can make state but not federal election ⁶
Alabama	Yes	Yes	No	No	No
Alaska	Yes ⁷	Yes	No	No	No
Arizona	Yes	Yes	No	No	No
Arkansas ⁸	Yes	Yes	Yes ⁹	Yes ¹⁰	Yes ¹¹
California	Yes	Yes	No	Depends ¹²	Depends ¹³
Colorado	Yes	Yes	No	No	No
Connecticut	Yes ¹⁴	Yes ¹⁵	No ¹⁶	No	No ¹⁷
Delaware	Yes	Yes	No	No	No
District of Columbia ¹⁸	Yes ¹⁹	No	Not Applicable	No	No
Florida ²⁰	Yes	Yes	No	No	No
Georgia	Yes	Yes	No	No	No
Hawaii	Yes	Yes	Yes	No	No
Idaho	Yes	Yes	No	No	No
Illinois	Yes	Yes	No	No	No
Indiana	Yes	Yes	No	No	No
Iowa	Yes	Yes	No	No	No
Kansas	Yes	Yes	No	No	No
Kentucky	Yes	Yes	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state conform to the federal treatment of I.R.C. § 338(h)(10) elections for regular (Subchapter C) corporations?

³ Does your state conform to the federal treatment of I.R.C. § 338(h)(10) elections for S corporations?

⁴ Must a separate state election be made?

⁵ If an election is made for federal tax purposes, can a taxpayer elect NOT to make the election for state tax purposes?

⁶ If an election is NOT made for federal tax purposes, can a taxpayer elect to make the election for state tax purposes?

⁷ **AK: Not 100% conformance. Exceptions for treatment of property values in apportionment factor.**

⁸ AR: See Regulation 2.26-51-413.

⁹ AR: This question only applies if the corporations are federal S corporations that are Arkansas C corporations, and if the corporation is not making an Arkansas 338(h)(10) election, the transaction is treated as a sale of stock for Arkansas purposes.

¹⁰ AR: *Id.*

¹¹ AR: *Id.*

¹² CA: Yes — C corps; No — S corps.

¹³ CA: *Id.*

¹⁴ CT: See Ruling 89-46; Ruling 2003-3.

¹⁵ CT: *Id.*

¹⁶ CT: *Id.*

¹⁷ CT: *Id.*

¹⁸ DC: Depends on facts and circumstances.

¹⁹ DC: IRS reference should be § 338(g).

²⁰ FL: Generally, Florida follows the federal treatment, however, the facts and circumstances of the transaction are subject to evaluation to ensure consistency with Florida statutes.

State ¹	State conforms to federal treatment for C corporations ²	State conforms to federal treatment for S corporations ³	State requires separate election ⁴	Taxpayer can make federal but not state election ⁵	Taxpayer can make state but not federal election ⁶
Louisiana ²¹	No	No	No	No	No
Maine	Yes	Yes	No	No	No
Maryland	Yes	Yes	No	No	No
Massachusetts ²²	Yes	Yes	No	No	No
Michigan	Yes	Yes	No	No	No
Minnesota	Yes	Yes	No	No	No
Mississippi	Yes	Yes	No	No	No
Missouri	Yes	Yes	No	No	No
Montana	Yes	Yes	No	No	No
Nebraska	Yes	Yes	No	No	No
New Hampshire	Yes	Yes	No	No	No
New Jersey	Yes	No ²³	No	No	No
New Mexico	Yes	Yes	No	No	No
New York City²⁴	Yes	No	No	No	No
North Carolina	Yes	Yes	No	No	No
North Dakota	Yes	Yes	No	No	No
Oklahoma	Yes	Yes	No	No	No
Oregon	Yes	Yes	No	No	No
Pennsylvania	Yes	No	No	No	No
Rhode Island	Yes	Yes	No	No	No
Tennessee	Yes	No ²⁵	No	No	No
Texas	Depends ²⁶	Depends ²⁷	No	No	No
Utah	Yes	Yes	No	No	No
Vermont	Yes	Yes	No	No	No
Virginia	Yes	Yes	No	No	No
West Virginia	Yes	Yes	No	No	No
Wisconsin	Yes	Yes	No	Yes	Yes

²¹ LA: Louisiana does not conform to the federal treatment of §338 elections, but if a corporation recognizes a gain from the transaction then it will be taken into account in determining gross income.

²² MA: See TIR 04-22.

²³ NJ: See N.J.A.C. 18:7-1.5.

²⁴ NYC: See RCNY 11-27(h)(i)(j).

²⁵ TN: S corporations are required to include in the computation of net earnings or losses any gain or loss attributable to an I.R.C. Section 338(h)(10) election. See Tenn. Code Ann. §§67-4-2006(b)(1)(M) and (b)(2)(Q).

²⁶ TX: As a general rule, the answer is yes. However, there are certain exceptions. For example, there is no deemed liquidation of the target corporation. Also, there is elimination of revenue received from a member of a combined group. See Texas Tax Code Section 171.1014(c).

²⁷ TX: *Id.*

I.R.C. § 338(h)(10) Elections: Treatment of Gain

State¹	Apportionable business income	Allocable nonbusiness income	Depends on facts and circumstances
Alabama	No	No	Yes
Alaska ²	No	No	Yes
Arizona	No	No	Yes
Arkansas	No	No	Yes
California	Yes	No	No
Colorado	Yes ³	No	Yes ⁴
Connecticut ⁵	Yes	No	No
Delaware ⁶	No	No	Yes
District of Columbia ⁷	No	No	Yes
Florida	No	No	Yes
Georgia	No	No	Yes
Hawaii	No	No	Yes
Idaho ⁸	No Response	No Response	No Response
Illinois	No	No	Yes
Indiana ⁹	Yes	No	No
Iowa	Yes	No	No
Kansas	No	No	Yes
Kentucky	Yes	No	No
Louisiana ¹⁰	No	No	Yes
Maine	Yes ¹¹	No	No
Maryland	Yes	No	No
Massachusetts	Yes	No	No
Michigan	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² AK: Generally, the sale of assets used in the business produces business income.

³ CO: Depends on facts and circumstances; normally will be apportionable business income.

⁴ CO: *Id.*

⁵ CT: *See Ruling 2003-3.*

⁶ DE: Delaware taxes the net gain or loss. Depending on whether the gain/loss is tangible or intangible determines whether it gets apportioned (intangible) or allocated (tangible).

⁷ DC: Depends on facts and circumstances.

⁸ ID: Generally, it would be apportionable business income but it would depend on the facts and circumstances.

⁹ IN: Starting 1/1/2016, to the extent permitted by the US Constitution.

¹⁰ LA: For tax years beginning after December 31, 2005, profits or losses from sales/exchanges not made in the regular course of business are subject to apportionment.

¹¹ ME: Generally.

State¹	Apportionable business income	Allocable nonbusiness income	Depends on facts and circumstances
Minnesota	Yes	No	No
Mississippi	Yes	No	No
Missouri	No	Yes	No
Montana	Yes	No	No
Nebraska	No	No	Yes
New Hampshire	Yes	No	No
New Jersey	Yes	No	No
New Mexico	No	No	Yes
New York City	No Response	No Response	No Response
North Carolina	Yes	No	No
North Dakota	Yes	No	No
Oklahoma	No	No	Yes
Oregon	No	No	Yes
Pennsylvania	No	No	Yes
Rhode Island	Yes	No	No
Tennessee	Yes	No	No
Texas	Yes	No	No
Utah	Yes	No	No
Vermont	No Response	No Response	No Response
Virginia ¹²	Yes	No	No
West Virginia	No	Yes	No
Wisconsin	No	No	Yes

¹² VA: See P.D. 05-157 and P.D. 08-188.

I.R.C. § 338(h)(10) Elections: Apportionment Factors

State ¹	Are gross proceeds included in target's sales factor ²	If not, is the gain included in target's sales factor ³	Requires gain and short-period income to be apportioned ⁴	If yes, is gain and short-period income apportioned based on:		
				Short-period factors ⁵	Prior year's factors ⁶	Other method ⁷
Alabama	Yes	Not Applicable	Yes	Yes	No	No
Alaska	No	No	Depends	Yes	No	No
Arizona	Yes ⁸	Not Applicable	Yes	Yes	No	No
Arkansas ⁹	Depends	No Response	Yes	Yes	No	No
California	Yes ¹⁰	Not Applicable	Yes	Yes	No	No
Colorado	Yes	Not Applicable	Yes	Yes	No	No
Connecticut	No ¹¹	No¹²	No	Not Applicable	Not Applicable	Not Applicable
Delaware ¹³	Yes	Not Applicable	No Response	Yes	No	No
District of Columbia	No	Yes	Yes	Yes	No	No
Florida	Yes	Not Applicable	Yes	No	No	Yes ¹⁴
Georgia	No	No	Yes	Yes ¹⁵	No	No
Hawaii	Depends	Depends	Depends	Not Applicable	Not Applicable	Not Applicable
Idaho	Yes	Not Applicable	Yes	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are the gross proceeds for the deemed sale of assets included in the target subsidiary's sales factor?

³ If "No," is the net gain from the deemed sale included in the sales factor?

⁴ Does your state require the gain and short-period income to be apportioned?

⁵ If "Yes," is the gain and short-period income apportioned based on the apportionment factors for the short period?

⁶ If "Yes," is the gain and short-period income apportioned based on the prior year's apportionment factors?

⁷ If "Yes," is the gain and short-period income apportioned based on something other than the apportionment factors for the short period or the prior year?

⁸ AZ: Depends on the specific assets. Certain asset sales may be included at net or not at all.

⁹ AR: If the sale is apportionable business income, Reg. 2.26-51-715 states that if inclusion of the proceeds of an occasional sale causes a material distortion then it is excluded.

¹⁰ CA: The general rule is that the gross proceeds are included in the sales factor. The sales may be excluded from the sales factor if substantial and occasional, see Cal. Code Regs. § 25137, sub. (c)(1)(A).

¹¹ CT: **Gross receipts from the sale or other disposition of real property, tangible personal property or intangible property are excluded from the calculation of the apportionment fraction if such property is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. See Conn. Gen. Stat. § 12-218(b)(6).**

¹² CT: *Id.*

¹³ DE: Delaware taxes the net gain or loss. Depending on whether the gain/loss is tangible or intangible determines whether it gets apportioned (intangible) or allocated (tangible).

¹⁴ FL: The gain is apportioned using the short period factors unless they are materially different from historical factors.

¹⁵ GA: Generally.

State ¹	If yes, is gain and short-period income apportioned based on:					
	Are gross proceeds included in target's sales factor ²	If not, is the gain included in target's sales factor ³	Requires gain and short-period income to be apportioned ⁴	Short-period factors ⁵	Prior year's factors ⁶	Other method ⁷
Illinois	No ¹⁶	No ¹⁷	Yes	Yes	No	No
Indiana	Yes ¹⁸	Not Applicable ¹⁹	Yes ²⁰	Yes ²¹	No ²²	No ²³
Iowa	No ²⁴	No ²⁵	Yes	Yes	No	No
Kansas	Yes	Not Applicable	Yes	Yes	No	No
Kentucky	Yes	Not Applicable	Yes	Yes	No	No
Louisiana	No	No	Yes	Yes	No	No
Maine	Yes	Not Applicable	Yes ²⁶	Yes	No	No
Maryland	No	Yes	Yes	Yes	No	No
Massachusetts	No ²⁷	No ²⁸	No Response ²⁹	No Response	No Response	No Response
Michigan	No ³⁰	No	Yes	Yes	No	No
Minnesota	No	No	Yes	Yes	No	No
Mississippi	No	Yes	Yes	Yes	No	No
Missouri	No	No	No	Not Applicable	Not Applicable	Not Applicable
Montana	No	Yes	Yes	Yes	No	No
Nebraska ³¹	Yes	Not Applicable	Yes	Yes	No	No
New Hampshire	No	Yes	Yes	Yes	No	No
New Jersey	No	Yes ³²	Yes ³³	Yes ³⁴	No ³⁵	No ³⁶

¹⁶ IL: See 86 Ill. Adm. Code §100.3380.

¹⁷ IL: *Id.*

¹⁸ IN: Assuming that the income is apportionable business income; otherwise, this answer is "no."

¹⁹ IN: *Id.*

²⁰ IN: Assuming that the income is apportionable business income; otherwise, this answer is "only the short period income not considering the gain."

²¹ IN: Assuming that the income is apportionable business income.

²² IN: *Id.*

²³ IN: *Id.*

²⁴ IA: Proceeds and gain are excluded from the sales factor per Iowa Rule 54.2(3)(f).

²⁵ IA: *Id.*

²⁶ ME: A short period return is not required in a 338(h)(10) election. The gain is includible in the sales factor of the seller.

²⁷ MA: See TIR 04-22.

²⁸ MA: *Id.*

²⁹ MA: *Id.*

³⁰ MI: Only the portion relating to inventory.

³¹ NE: This depends on the specific facts.

³² NJ: [The answer is] changed from 2015 as a result of P.L. 2014, c.13. The law amended N.J.S.A. 54:10A-6.1 such that the gain in most cases will be apportioned operational income. See also *McKesson Water Products Company v. Director*, Div. of Taxation, 408 N.J. Super. 213 (App. Div. 2009), affirming *McKesson Water Products Company v. Director*, Div. of Taxation, 23 N.J.Tax 449 (Tax Ct. 2007).

³³ NJ: *Id.*

³⁴ NJ: *Id.*

³⁵ NJ: *Id.*

³⁶ NJ: *Id.*

State ¹	If yes, is gain and short-period income apportioned based on:					
	Are gross proceeds included in target's sales factor ²	If not, is the gain included in target's sales factor ³	Requires gain and short-period income to be apportioned ⁴	Short-period factors ⁵	Prior year's factors ⁶	Other method ⁷
New Mexico	No	Yes	Yes ³⁷	Yes	No	No
New York City	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	No	No	Yes ³⁸	No	No	Yes
North Dakota	No	No	Yes	Yes ³⁹	No ⁴⁰	No ⁴¹
Oklahoma	No	No	Yes	No	No	Yes
Oregon	No	No	Yes	Yes	No	No
Pennsylvania	Yes	Not Applicable	Yes	Yes	No	No
Rhode Island	No	Yes	Yes	Yes	No	No
Tennessee	Yes	Not Applicable	Yes ⁴²	No	No	Yes ⁴³
Texas	Depends ⁴⁴	Depends ⁴⁵	No Response ⁴⁶	No Response	No Response	No Response
Utah	No	No	Yes ⁴⁷	No	No	Yes
Vermont	No Response	No Response	No Response	No Response	No Response	No Response
Virginia	Yes	Not Applicable	Yes	Yes	No	No
West Virginia	No	No	No	Not Applicable	Not Applicable	Not Applicable
Wisconsin	No	Depends⁴⁸	Yes	Yes	No	No

³⁷ NM: Assuming all intangible assets were sold.

³⁸ NC: The gain is treated as a casual sale. The net gain is excluded from the numerator and the denominator. We then use the apportionment factor of the period in which the gain is reported.

³⁹ ND: Unless it produces an unreasonable result, in which case an alternative would be used.

⁴⁰ ND: *Id.*

⁴¹ ND: *Id.*

⁴² TN: Short period factors should be used if they are reasonably consistent with the existing facts and circumstances and do not result in distortion. Otherwise, prior year factors may be required.

⁴³ TN: *Id.*

⁴⁴ TX: Margin is apportioned using a single gross receipts factor. Amounts received by the target corporation from the deemed sale of assets are apportioned in accordance with the rules applicable to sales of such assets. See Rule 3.591(e)(7). With respect to using gross proceeds or a net gain, amounts are reported based on the amount reported for federal tax purposes.

⁴⁵ TX: *Id.*

⁴⁶ TX: Unless the target subsidiary is terminated as a legal entity in its state of incorporation, it will continue to file annual franchise tax reports. It will report the gain/income from the transaction in accordance with the accounting period provisions set out in Texas Tax Code Section 171.1532(b). Under these circumstances, there will be no short period report.

⁴⁷ UT: If the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined report to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group. Thus, the combined apportionment fraction would be utilized. If the target corporation is not a member of a unitary group immediately preceding the acquisition date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income. Thus, the apportionment fraction of the target corporation for the short period would be utilized. See UCA 59-7-114(3).

⁴⁸ WI: The deemed sale of inventory is included in the old target corporation's sales factor. However, the gain or loss on the deemed sale of the old target's other tangible business assets is not included in the sales factor. For purposes of the sale factor, sales include gross receipts from the sale of inventory.

I.R.C. § 338(h)(10) Elections: Filing Obligations

State ¹	Do state's filing requirements follow the federal rules?	If no, when is the target's short-period return due?
Alabama	Yes	
Alaska	Yes	
Arizona	Yes	
Arkansas	Yes	
California	Yes ²	
Colorado	No	Return due 15 th day of the 4 th month from the close of the taxable period. Requests for extension are routinely granted, but tax must be paid by the original due date.
Connecticut	Yes	
Delaware ³	Not Applicable	
District of Columbia	No	The target's return is due on the 15 th of the 4 th month. Calendar year filer - April 15th or fiscal year filer - the 15 th day of the 4 th month after the tax year closes.
Florida	Yes	
Georgia	No	The 15 th day of the 4 th month following the close of the short period.
Hawaii	No ⁴	The 20 th day of the 4 th month following the close of the short taxable year.
Idaho	Yes	
Illinois	Yes	
Indiana	Yes	
Iowa ⁵	Yes	
Kansas	Yes	
Kentucky	Yes	
Louisiana	Yes	
Maine	Yes	
Maryland ⁶	Yes	
Massachusetts	Depends	
Michigan	No	The end of the 4 th month following the end of the short period unless an extension is requested.

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² CA: See RTC §§ 18601(c), 24634(a)(4).

³ DE: Delaware does not allow consolidated returns to be filed.

⁴ HI: Target's short period return is due on or before the 20th day of the fourth month following the close of the short taxable year. A six-month extension of time to file is available if Form N-301 is timely filed. No additional extension to file is available; but target may request abatement of late filing penalty and interest due to reasonable cause.

⁵ IA: The state return is due 45 days after the due date of the federal per Iowa Code section 422.21.

⁶ MD: Within 60 days after liquidation.

State¹	Do state's filing requirements follow the federal rules?	If no, when is the target's short-period return due?
Minnesota	Yes	
Mississippi	No	2½ months after the end of the period. Return may be filed with an extension the same as federal.
Missouri	No	Target subsidiary return due date would be the 15 th day of the 4 th month after the end of the target subsidiary taxable year.
Montana	No	Return due date is the 15 th day of the 5 th month following the close of the tax period. Six month extension is provided for in Montana law; however, tax is due by original due date.
Nebraska	Yes	
New Hampshire	Yes	
New Jersey	No	The short period is return on the 15 th day of the 4 th month following the acquisition. See N.J.A.C. 18:7-5.8(a) and (b) and N.J.A.C. 18:7-12.1.
New Mexico	Yes	
New York City	No Response	
North Carolina	No	North Carolina does not permit the filing of a consolidated return. The short period return for the target subsidiary would be due on the 15 th day of the fourth month after the close of the corporation's income year.
North Dakota	Yes	
Oklahoma	Yes	
Oregon	Yes	
Pennsylvania	Yes	
Rhode Island	No	Return and payment due upon sale. Also note RI instituted combined reporting periods beginning on or after January 1, 2015. A group may elect to file a combined return using their federal consolidated elected group as the members of the combined group.
Tennessee	Yes ⁷	
Texas	No	Unless the target subsidiary is terminated as a legal entity in its state of incorporation, it will continue to file annual franchise tax reports. It will report the gain/income from the transaction in accordance with the accounting period provisions set out in Texas Tax Code Section 171.1532(b). Under these circumstances, there will be no short period report.
Utah	No	15 th day of the 4 th month following end of tax year with an automatic 6-month extension for filing the return. Utah would likely waive any late penalties in those cases when the Utah due date falls ahead of the federal due date for filing the target corporation's return.
Vermont	No Response	
Virginia	Yes ⁸	
West Virginia	Yes	
Wisconsin	Yes ⁹	

⁷ TN: Administratively, the Department will consider the return timely if it is filed by the federal due date. However, initially the return will be considered delinquent and the taxpayer will have to contact the Department to obtain administrative treatment consistent with federal rules.

⁸ VA: See P.D. 97-171 and P.D. 98-179.

⁹ WI: Tax is due 2½ months after the end of the short period.

Holding Companies

Treatment of Deductions For Royalties Paid To Passive Investment Companies Varies Among States

States have increasingly resisted a corporate tax planning strategy involving the deduction of royalty payments for intangible property rights held by an out-of-state subsidiary. The subsidiaries, which are often referred to as “passive investment companies” or “PICs,” are usually established in states such as Delaware or Nevada, which do not tax royalty income.

After transferring the intangible property to the out-of-state subsidiary, the in-state corporation deducts costs (such as royalties or management fees) relating to the right to use the subsidiary’s patent or trademark for federal tax purposes under I.R.C. §162. The end result for states, which generally use federal taxable income as the starting point for computing tax, is that there is less income to tax.

Defeating PICs Through Legislation and Litigation

The states have used a variety of techniques to counter this tax planning strategy. Some states, including Massachusetts and Virginia, enacted legislation allowing them to require the in-state corporation to add back the deduction for intangible expenses and costs arising from the payments made to an out-of-state subsidiary. Another approach is to require the in-state corporation and the out-of-state subsidiary to report their income as a unitary group.

Other states, most notably South Carolina, have successfully argued that the out-of-state subsidiary’s receipts are taxable because the entity achieved nexus by licensing property to an in-state corporation. In *Geoffrey Inc. v. South Carolina Tax Dept.*, 437 S.E.2d 13 (S.C. 1993), *cert. denied*, 510 U.S. 992 (1993), the South Carolina Supreme Court held that an out-of-state subsidiary’s licensing of intangible property to an in-state corporation created sufficient nexus with the state to warrant the imposition of income tax.

In *Maryland Comp. of the Treas. v. SYL Inc.* and *Maryland Comp. of the Treas. v. Crown Cork & Seal Co. (Delaware) Inc.*, 825 A.2d 399 (Md. 2003), *cert. denied*, 540 U.S. 1090 (2003), Maryland found that two Delaware subsidiaries that held trademarks for two firms operating in Maryland were subject to tax in Maryland because they lacked economic substance as separate business entities. The court noted that many of the subsidiaries’ activities were performed by independent nexus companies, which were retained for the purpose of making the entities appear as though they had economic substance.

Survey Reveals Variety in Treatment of Intangible Payments to Subsidiaries

We asked the states how they would treat transactions involving an in-state corporation’s transfer of intangible property and payment of royalties to an out-of-state subsidiary. Seventeen states indicated the in-state corporation would be required to add back the deduction for costs arising from payments made to the subsidiary. Of these 17 states, two indicated that the addback requirement would only apply to U.S. subsidiaries. Thirteen states indicated that the addback requirement would apply to both U.S. and non-U.S. subsidiaries. Twenty-one states said the in-state corporation and the out-of-state subsidiary would be required to report income to the state as a unitary group.

When asked about the policy underlying nexus determinations for PICs, 23 states said that the out-of-state subsidiary achieved nexus by licensing intangible property to an in-state corporation. Only nine states determined that the out-of-state subsidiary achieved nexus due to the activities of the in-state parent company.

The state’s responses are detailed in the charts on the following pages.

For more information, see:

Portfolio 1410-2nd: Limitations on States’ Jurisdiction to Impose Net Income Based Taxes at 1410.03.I and 1410.10.

Treatment of Intangible Holding Companies

State ¹	Addback deduction for payments to sub ²	If yes, apply to U.S. subs ³	If yes, apply to U.S. and non-U.S. subs ⁴	Report income as unitary group ⁵	Out-of-state sub has nexus due to licensing intangible property ⁶	Out-of-state sub has nexus due to parent's activities ⁷
Alabama	Yes	No	Yes	No	No Response	No Response
Alaska	No	Not Applicable	Not Applicable	Yes	Yes	No
Arizona	No Response ⁸	No Response ⁹	No Response ¹⁰	Yes	No Response ¹¹	No Response ¹²
Arkansas	No	Not Applicable	Not Applicable	No	Yes	No ¹³
California	No	Not Applicable	Not Applicable	Yes ¹⁴	No ¹⁵	No
Colorado ¹⁶	Depends	Depends	Depends	Yes	Yes	Depends
Connecticut	Yes	No	Yes	Depends	No Response ¹⁷	Depends
Delaware ¹⁸	No	Not Applicable	Not Applicable	No	No	No
District of Columbia	Yes ¹⁹	No	Yes	Yes	Yes	Yes ²⁰
Florida ²¹	No	Not Applicable	Not Applicable	No	Yes	Yes
Georgia	Yes	No	Depends	No	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Based on the assumptions set out above, the in-state corporation would be required to add back the deduction for costs arising from the payments made to the subsidiary.

³ If an addback is required, the addback requirement would only apply to U.S. subsidiaries.

⁴ If an addback is required, the addback requirement would apply to both U.S. and non-U.S. subsidiaries.

⁵ Based on the assumptions set out above, the in-state corporation and the out-of-state subsidiary would be required to report income to your state as a unitary group.

⁶ Based on the assumptions set out above, the out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state by licensing intangible property to an in-state corporation.

⁷ Based on the assumptions set out above, the out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state based on its parent's activities.

⁸ AZ: Question is generally moot because these entities would be included in a combined unitary return.

⁹ AZ: *Id.*

¹⁰ AZ: *Id.*

¹¹ AZ: *Id.*

¹² AZ: *Id.*

¹³ AR: Nexus would be based on the parent's activities but the factors are based on the subsidiary's factors. See Arkansas Regulation 1996-3.

¹⁴ CA: Nexus may be present depending on facts and circumstances. See RTC Section 23101(b).

¹⁵ CA: *Id.*

¹⁶ CO: Colorado asserts that the use of intangible assets in the state creates nexus for the owner of the intangibles. In addition, if the owner is a combinable entity, that entity must be combined with other members of the combined group. However, the state may assert the alternative theories outlined here based on the particular facts and circumstances.

¹⁷ CT: See IP 2010 (29.1).

¹⁸ DE: Receipts shall be allocated proportionately to the states in which the product or process protected by the patent is manufactured or used or in which the publication protected by the copyright is produced or printed.

¹⁹ DC: Unless arm's length and subject to 4.5% composite tax rate on royalty. See Code Section 47-1803.03.

²⁰ DC: Facts and Circumstances.

²¹ FL: Note: s. 220.131, F.S. permits forced consolidation and s. 220.44, F.S. permits adjustments to properly reflect income.

State ¹	Addback deduction for payments to sub ²	If yes, apply to U.S. subs ³	If yes, apply to U.S. and non-U.S. subs ⁴	Report income as unitary group ⁵	Out-of-state sub has nexus due to licensing intangible property ⁶	Out-of-state sub has nexus due to parent's activities ⁷
Hawaii	No	Not Applicable	Not Applicable	Yes	Yes	No
Idaho	No	Not Applicable	Not Applicable	Yes ²²	Yes ²³	No
Illinois	No ²⁴	Not Applicable	Not Applicable	Yes ²⁵	No Response ²⁶	No Response ²⁷
Indiana	Yes	No	Yes	No	No	No
Iowa	No	Not Applicable	Not Applicable	No	Yes ²⁸	No
Kansas	No	Not Applicable	Not Applicable	Yes	No	No
Kentucky	No	Not Applicable	Not Applicable	No	Yes	No
Louisiana ²⁹	No Response	No Response	No Response	No Response	Yes	No Response
Maine	No ³⁰	Not Applicable ³¹	Not Applicable ³²	Yes ³³	Yes ³⁴	Yes ³⁵
Maryland	Yes	No	Yes	Not Applicable	No	No
Massachusetts ³⁶	Yes	No	Depends	No	Depends ³⁷	Depends ³⁸
Michigan	Yes ³⁹	No	Yes ⁴⁰	Yes ⁴¹	No	No
Minnesota	No	Not Applicable	Not Applicable	Yes	Yes	No
Mississippi	Yes	Yes	No	No	Yes	Yes
Missouri ⁴²	No	Not Applicable	Not Applicable	No	No	No
Montana	No	Not Applicable	Not Applicable	Yes	Depends	No
Nebraska	No	Not Applicable	Not Applicable	Yes	Yes	No
New Hampshire	No Response	No Response	No Response	Yes	Yes	No Response

²² ID: Depends on facts, determined on a case-by-case basis.

²³ ID: *Id.*

²⁴ IL: Response assumes a unitary relationship. If the subsidiary qualifies as an 80/20 company, or is required to apportion business income under a different subsection of IITA Section 304, addback may be required. **Where add back is required, the out-of-state subsidiary is allowed to exclude the royalty payments from income.**

²⁵ IL: *Id.*

²⁶ IL: *Id.*

²⁷ IL: *Id.*

²⁸ IA: A decision was issued on December 31, 2010, by the Iowa Supreme Court affirming nexus involving KFC Corporation, a company with no physical presence in Iowa.

²⁹ LA: Under La. R.S. 47:287.480, the Secretary is authorized to make such adjustments. These adjustments may be made depending on the facts and circumstances.

³⁰ ME: Could be yes if there was a legitimate separate basis filing.

³¹ ME: Yes if [answer to whether the in-state corporation would be required to add back the deduction for costs arising from the payments made to the subsidiary] is Yes.

³² ME: *Id.*

³³ ME: Generally; depends on facts and circumstances.

³⁴ ME: Maybe.

³⁵ ME: If there is an agency relationship.

³⁶ MA: See 830 CMR 63.31.1 Add Back of Interest or Intangible Expense.

³⁷ MA: See TIR 03-19.

³⁸ MA: *Id.*

³⁹ MI: Add-back required for related persons not included in unitary business group. See MCL 206.623(2)(e).

⁴⁰ MI: For related persons not included in unitary business group.

⁴¹ MI: So long as entities meet definition of unitary business group.

⁴² MO: See *Acme Royalty Co. v. Director of Revenue*, 92 S.W.3d 72 (Mo. 2002) (en banc).

State ¹	Addback deduction for payments to sub ²	If yes, apply to U.S. subs ³	If yes, apply to U.S. and non-U.S. subs ⁴	Report income as unitary group ⁵	Out-of-state sub has nexus due to licensing intangible property ⁶	Out-of-state sub has nexus due to parent's activities ⁷
New Jersey	Yes ⁴³	No ⁴⁴	Yes ⁴⁵	No ⁴⁶	Yes	Yes
New Mexico	No	Not Applicable	Not Applicable	No	Yes	Yes
New York City	Yes⁴⁷	No⁴⁸	Yes⁴⁹	Depends⁵⁰	No	No
North Carolina	Yes ⁵¹	Yes ⁵²	No ⁵³	No	Yes	No
North Dakota	No	Depends ⁵⁴	Depends ⁵⁵	Depends ⁵⁶	Depends ⁵⁷	Depends ⁵⁸
Oklahoma	Depends	No Response	No Response	Depends	Depends	Depends
Oregon	Yes ⁵⁹	No	Yes	Yes ⁶⁰	Yes	Yes ⁶¹
Pennsylvania	Depends	No	Yes	No	No	No
Rhode Island ⁶²	Yes	No	Yes	Yes	Yes	Yes
Tennessee	Yes ⁶³	No	Yes ⁶⁴	No ⁶⁵	No ⁶⁶	No ⁶⁷

⁴³ NJ: See *Lanco, Inc. v. Director, Division of Taxation*, 21 N.J. Tax 200 (2003), 379 N.J. Super. 562, 879 A.2d 1234 (App. Div. 2005), 188 N.J. 380, 9890 A.2d 176 (2006), cert. denied, 127 S.Ct. 2974 (2007).

⁴⁴ NJ: *Id.*

⁴⁵ NJ: *Id.*

⁴⁶ NJ: *Id.*

⁴⁷ **NYC: Only if the in-state corporation and the subsidiary are not included in a combined report. See Administrative Code sections 11-602(n), and 11-652(n).**

⁴⁸ **NYC: See Administrative Code sections 11-605.4, 11-605.5, and 11-655. See Administrative Code sections 11-602(n), and 11-652(n).**

⁴⁹ **NYC: See Administrative Code sections 11-602(n), and 11-652(n).**

⁵⁰ **NYC: Depends on whether the entity meets the applicable criteria for combination. See Administrative Code sections 11-602(n), and 11-652(n).**

⁵¹ NC: G.S. 105-130.7A provides an election for reporting royalties to prevent the operating company and trademark holding company from both paying tax on the royalties.

⁵² NC: *Id.*

⁵³ NC: *Id.*

⁵⁴ ND: Answers depend on the facts and circumstances. Also, to the extent the two companies are included in a combined report, the payments would be eliminated as an intercompany transaction.

⁵⁵ ND: *Id.*

⁵⁶ ND: *Id.*

⁵⁷ ND: *Id.*

⁵⁸ ND: *Id.*

⁵⁹ OR: Answer based on assumption that affiliates don't file a consolidated return.

⁶⁰ OR: If the corporations were included in a consolidated federal return.

⁶¹ OR: Oregon follows the *Joyce* rule: subsidiary would not be taxable based on the parent having nexus, but is taxable due to their own activities having substantial nexus.

⁶² RI: Rhode Island instituted combined reporting for 2015.

⁶³ TN: The deductions of intangible expenses must be properly disclosed on the return as required by Tennessee law and the transactions involved must have a practical economic effect other than the creation of tax benefits and that tax avoidance is not the principal purpose of such transactions. Intangible expenses paid, accrued, or incurred in a connection with a transaction with one or more affiliates must be added back pursuant to Tenn. Code Ann. §67-4-2006(b)(1)(K). Application for deducting the related intangible expense must be made pursuant to Tenn. Code Ann. §67-4-2006(b)(2)(N)(i).

⁶⁴ TN: Under Tenn. Code Ann. §67-4-2006(b)(2)(N)(i)(a), the Commissioner shall approve any application for the deduction of any intangible expense, or portion thereof that is paid, accrued, or incurred to an affiliate in a foreign nation that is a signatory to a comprehensive income tax treaty with the U.S.

⁶⁵ TN: The deductions of intangible expenses must be properly disclosed on the return as required by Tennessee law and the transactions involved must have a practical economic effect other than the creation of tax benefits and that tax avoidance is not the principal purpose of such transactions. Intangible expenses paid, accrued, or incurred in a connection with a transaction with one or more affiliates must be added back pursuant to Tenn. Code Ann. §67-4-2006(b)(1)(K). Application for deducting the related intangible expense must be made pursuant to Tenn. Code Ann. §67-4-2006(b)(2)(N)(i).

⁶⁶ TN: *Id.*

⁶⁷ TN: *Id.*

State ¹	Addback deduction for payments to sub ²	If yes, apply to U.S. subs ³	If yes, apply to U.S. and non-U.S. subs ⁴	Report income as unitary group ⁵	Out-of-state sub has nexus due to licensing intangible property ⁶	Out-of-state sub has nexus due to parent's activities ⁷
Texas	No ⁶⁸	Not Applicable	Not Applicable	No Response ⁶⁹	No	No
Utah	No	Not Applicable	Not Applicable	Yes	No	No
Vermont	No Response	No Response	No Response	Yes	Yes	No Response
Virginia	Yes ⁷⁰	No	Yes	No	No	No
West Virginia	No	Not Applicable	Not Applicable	Yes	Yes	No
Wisconsin	Yes ⁷¹	No ⁷²	Yes ⁷³	Yes ⁷⁴	Yes ⁷⁵	Yes ⁷⁶

⁶⁸ TX: Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report. However, there is elimination of revenue received from a member of a combined group and elimination of amounts paid to a member of a combined group. See Texas Tax Code **Section** 171.1014(c).

⁶⁹ TX: *Id.*

⁷⁰ VA: See Va. Code §58.1-402(B)(8).

⁷¹ WI: The related entity expenses that may be required to be added back to federal income for Wisconsin purposes are interest expenses, rent expenses, management fees, and intangible expenses. The requirement for the addition depends in part on whether the corporations are required to file as a combined group. SEPARATE REPORTING. A corporation must modify federal income for Wisconsin purposes so that certain expenses that were paid, accrued, or incurred to a related entity (or related person) are added back. COMBINED REPORTING. If two or more corporations (in the example given, the in-state corporation and the out-of-state subsidiary) meet the requirements for combined reporting, the corporations must file a Wisconsin combined return. A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules. If a commonly controlled group includes a passive holding company that holds intangible assets that are used by other companies of the group in a unitary business, that holding company is deemed to be engaged in the unitary business, even if its activities are primarily passive. Corporations that file in combined groups aren't required to add back expenses between members of the same combined group if there is no net effect on combined unitary income (in other words, if the payer's expense and the payee's income from the transaction cancel each other out in combined unitary income). However, a corporation in a combined group may have to add back interest, rent, management fees, or intangible expenses if they were paid, accrued, or incurred to a related entity that is not a member of the group or to a member of the group that excluded its income from the transaction from combined unitary income.

⁷² WI: *Id.*

⁷³ WI: *Id.*

⁷⁴ WI: *Id.*

⁷⁵ WI: SEPARATE REPORTING. A foreign corporation undertaking licensing of intangible rights for use in Wisconsin is considered to have nexus and shall be subject to Wisconsin franchise or income taxes. COMBINED REPORTING. For a combined group, nexus is determined for the unitary business as a whole. If a member of a combined group has nexus in Wisconsin, and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin. If two or more corporations (in the example given, the in-state corporation and the out-of-state subsidiary) meet the requirements for combined reporting, the corporations must file a Wisconsin combined return. A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules. If a commonly controlled group includes a passive holding company that holds intangible assets that are used by other companies of the group in a unitary business, that holding company is deemed to be engaged in the unitary business, even if its activities are primarily passive.

⁷⁶ WI: *Id.*

Throwback Rules

States Indicate Policies Regarding Use, Application of Throwback/Throwout Rules

A common strategy employed by multistate corporations is to source sales receipts to another state that imposes no income tax or an income tax at a rate lower than the state in which they are commercially domiciled. Some states have sought to prevent in-state corporations from sourcing receipts to states with which the firms lack nexus by employing a throwback rule—requiring in-state corporations to include such out-of-state sales in the numerator of their receipts factor.

Effect of the Throwback Rule

In computing the numerator of the receipts factor, taxpayers usually assign receipts from the sale of tangible personal property to the destination state. However, under a throwback rule, such receipts are assigned to the state from which the goods were shipped if the taxpayer is not taxable in the destination state.

Accordingly, a throwback rule expands the numerator of the receipts factor in the state from which goods were shipped by including receipts from goods sold and shipped to destination states that are precluded from imposing their taxes. Without a throwback rule, goods shipped into a state in which a taxpayer is not subject to tax would not be included in the numerator of any state's receipts factor. Such "orphan" sales would not be subject to tax in any state and, consequently, the taxpayer would pay tax on less than 100 percent of its income.

However, because not all states use a throwback rule, multistate corporate taxpayers may be able to structure their activities in a manner which would result in less than 100 percent of their income being subjected to tax.

Bloomberg BNA Survey Addresses Impact of Throwback Rules

Twenty-two states indicated that they have a throwback rule. However, only a few states (Alabama, Illinois, Maine, New Mexico and West Virginia) have adopted a throwout rule, which requires a corporation to exclude sales attributable to states with which the corporation lacks nexus from the denominator of the sales factor.

In states that have a throwback rule, taxpayers are sometimes unsure if their particular circumstances might trigger the rule's imposition. One gray area involves whether a corporation will be considered taxable in the destination state. In response to a survey question on this issue, 11 states indicated that they apply the home state's nexus laws and seven states said that they apply the destination state's laws when determining if the throwback rule applies.

Five states—California, Delaware, Kansas, Nebraska and Utah—responded that having an affiliated group member that is taxable in the state may be enough to subject a taxpayer to taxation.

A corporation may also be required to show that it filed a return and paid tax to prove that it is taxable in the destination state. Thirteen states indicated that a corporation must file a return and pay tax in the destination state in order to prevent application of a throwback rule.

The states' responses to additional questions about the application of their throwback and throwout rules appear in the chart on the following pages.

For more information, see:

Corporate Income Tax Navigator at 6.4.4.

Portfolio 1150-2nd: Income Taxes: Principles of Formulary Apportionment at 1150.07.C.4., 1150.07.C.7., 1150.07.D.4., and 1150.08.C.

Portfolio 1410-2nd: Limitations on States' Jurisdiction to Impose Net Income Based Taxes at 1410.07.A.

Throwback/Throwout Rules

State ¹	Does state have a throwback rule? ²	If yes, determine to tax based on state's nexus law? ³	If yes, determine to tax based on destination's law? ⁴	Must corp. file return and pay tax? ⁵	Is corp. taxable if affiliated corp. is taxable? ⁶	Does throwback apply to foreign country sales? ⁷	Does state have a throwout rule? ⁸
Alabama	Yes	No	Yes	No	No	Yes	Yes
Alaska	Yes	Yes	No	No	No	Yes	No
Arizona	No	Not Applicable ⁹	Not Applicable ¹⁰	Not Applicable ¹¹	Not Applicable ¹²	Not Applicable ¹³	No
Arkansas	Yes	No	No	Yes	No	Yes	No
California	Yes	Not Applicable ¹⁴	Not Applicable ¹⁵	No	Yes ¹⁶	Yes	No
Colorado	Yes ¹⁷	Yes	No	No ¹⁸	No ¹⁹	Yes ²⁰	No ²¹
Connecticut	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Delaware	No	Not Applicable	Not Applicable	No	Yes ²²	No	No ²³
District of Columbia	No	No	Yes	Yes	No	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state have a throwback rule (i.e., does your state require corporations to include in the numerator of the sales factor sales attributable to a state in which the corporation is not subject to tax)?

³ If your state has a throwback rule, does your state determine if the corporation is subject to tax based on your state's own nexus law?

⁴ If your state has a throwback rule, does your state determine if the corporation is subject to tax based on the nexus law of the destination state?

⁵ To be considered taxable in the destination state, must the corporation be able to prove that it filed a return and paid a tax to that state?

⁶ For this purpose, does your state consider a corporation to be taxable in the other state if one of the members of the corporation's affiliated group is taxable in the other state?

⁷ Does your state's throwback rule apply to sales made in foreign countries?

⁸ Does your state have a throwout rule (i.e., does your state require corporations to exclude from the denominator of the sales factor sales attributable to states in which the corporation lacks sufficient nexus to subject it to the state's income-based tax)?

⁹ AZ: Not applicable since Arizona does not have a throwback rule.

¹⁰ AZ: *Id.*

¹¹ AZ: *Id.*

¹² AZ: *Id.*

¹³ AZ: *Id.*

¹⁴ CA: Throwback to California depends on whether the taxpayer is taxable in the destination state; whether the taxpayer is taxable in the destination state depends on the jurisdictional standards of the United States. See 18 §CCR 25122(c).

¹⁵ CA: *Id.*

¹⁶ CA: This answer is for purposes of throwback only. The fact that a member corporation has nexus with the other state does not give the Corporation in question nexus with the other state. California returned to the *Finnigan* rule in 2011.

¹⁷ CO: Response applies where taxpayer elects Colorado three-factor apportionment. No throwback applies under Colorado two-factor apportionment election. Beginning in 2009, single sales-factor apportionment requires throwback as outlined above.

¹⁸ CO: *Id.*

¹⁹ CO: *Id.*

²⁰ CO: *Id.*

²¹ CO: *Id.*

²² DE: Delaware requires that the numerator consist only of sales deemed attributable to Delaware to be included in the numerator.

²³ DE: *Id.*

State ¹	Does state have a throwback rule? ²	If yes, determine to tax based on state's nexus law? ³	If yes, determine to tax based on destination's law? ⁴	Must corp. file return and pay tax? ⁵	Is corp. taxable if affiliated corp. is taxable? ⁶	Does throwback apply to foreign country sales? ⁷	Does state have a throwout rule? ⁸
Florida	No ²⁴	Not Applicable	Not Applicable	No ²⁵	No	Not Applicable	No
Georgia ²⁶	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Hawaii	Yes	Yes	No ²⁷	Yes ²⁸	No	No	No
Idaho	Yes	No Response ²⁹	No Response ³⁰	Yes ³¹	No	Yes	No
Illinois	Yes	No	Yes	Yes ³²	No	Yes	Yes ³³
Indiana	No	No	No	Not Applicable	No	Not Applicable	No
Iowa	No	Not Applicable	Not Applicable	No	No	No	No
Kansas	Yes	Yes	No	No	Yes	Yes	No
Kentucky	No ³⁴	Not Applicable	Not Applicable	Yes	No	No	No
Louisiana	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Maine	No	Not Applicable ³⁵	Not Applicable ³⁶	No ³⁷	No	No Response ³⁸	Yes ³⁹
Maryland	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Yes	Yes	No Response	Yes ⁴⁰	No	No	No
Michigan	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Minnesota ⁴¹	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Mississippi	Yes	No	Yes	No	No	Yes	No
Missouri	Yes	No	Yes	No	No	Yes	No
Montana	Yes	Yes	No	Yes	No	Yes	No

²⁴ FL: Corporations that only do business in Florida may not apportion their income simply because they made sales outside Florida. **See Rule 12C-1.015(1)(d), F.A.C.**

²⁵ FL: **See Rule 12C-1.015(1)(a)2., F.A.C.**

²⁶ GA: *See* regulation 560-7-3-.06.

²⁷ HI: *See* section 18-235-23-02, Hawaii Administrative Rules.

²⁸ HI: *Id.*

²⁹ ID: The Commission has not ruled on these facts.

³⁰ ID: *Id.*

³¹ ID: If requested by the Tax Commission. *See* IDAPA 35.01.01.390.

³² IL: Unless the taxpayer proves that the other state has jurisdiction to impose an income tax but that, under that state's law, no filing or payment was due.

³³ IL: IITA Section 304(a)(3)(C-5)(iv) contains a throwout rule in the case of sales of services.

³⁴ KY: If a corporation does not file a return in at least one state other than Kentucky, all sales are thrown back to Kentucky. However, if a corporation files only in Kentucky, it doesn't use an apportionment factor. *See* KRS 141.010(14)(a).

³⁵ ME: Maine does not have a throwback rule so we did not answer this question.

³⁶ ME: *Id.*

³⁷ ME: *See* Rule 801.04(A)(2).

³⁸ ME: Maine does not have a throwback rule so we did not answer this question.

³⁹ ME: Subject sales are excluded from both the numerator and denominator.

⁴⁰ MA: *See* 830 CMR 63.38.1(5) ("A taxpayer that does not establish that it has filed a return and paid the tax due in a particular state is presumed not to be subject to tax in that state.")

⁴¹ MN: Important - Starting in 2013, Minn. Stat. Section 290.17, subd. 4 was amended to require that all sales of a unitary business made within Minnesota be included in the sales factor of a corporation that is both a member of the unitary business and subject to the corporate franchise tax.

State ¹	Does state have a throwback rule? ²	If yes, determine to tax based on state's nexus law? ³	If yes, determine to tax based on destination's law? ⁴	Must corp. file return and pay tax? ⁵	Is corp. taxable if affiliated corp. is taxable? ⁶	Does throwback apply to foreign country sales? ⁷	Does state have a throwout rule? ⁸
Nebraska	No	Not Applicable	Not Applicable	No	Yes ⁴²	Not Applicable	No
New Hampshire	Yes	Yes	No	Yes	No	Yes	No
New Jersey	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No ⁴³
New Mexico	Yes	No	Yes	No	No	Yes	Yes
New York City	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
North Carolina	No	Not Applicable	Not Applicable	No	No	Not Applicable	No
North Dakota	Yes	Yes	No	No	No	Yes	No
Oklahoma	Yes	No Response ⁴⁴	No Response ⁴⁵	No	No	No	No
Oregon	Yes	No	Yes	No	No	Yes	No
Pennsylvania	No	Not Applicable	Not Applicable	Not Applicable ⁴⁶	Not Applicable ⁴⁷	Not Applicable ⁴⁸	No
Rhode Island	Yes	No	Yes	Yes	No	No	No
Tennessee	No	Not Applicable	Not Applicable	No	No	Not Applicable	No
Texas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Utah	Yes	Yes	No	Yes ⁴⁹	Yes ⁵⁰	Yes	No
Vermont	Yes	Yes	No Response	No	No	Yes	No
Virginia	No ⁵¹	Not Applicable	Not Applicable	No ⁵²	No	No	No
West Virginia	No	Not Applicable	Not Applicable	Yes	No	Not Applicable	Yes
Wisconsin	Yes ⁵³	Yes	No	Yes ⁵⁴	Depends ⁵⁵	No	No

⁴² NE: We assume “affiliated group” is the same as Nebraska’s “unitary group.”

⁴³ NJ: P. L. 2008, c. 120, signed on December 19, 2008, applicable to privilege periods beginning on or after July 1, 2010, eliminates the throw-out provision of the apportionment formula for corporate business tax.

⁴⁴ OK: If taxpayer is doing business in destination state, sales must be thrown back.

⁴⁵ OK: *Id.*

⁴⁶ PA: No throwback rule.

⁴⁷ PA: *Id.*

⁴⁸ PA: *Id.*

⁴⁹ UT: An exception would exist if the particular state didn’t impose a corporate income or franchise tax. Other evidence might suffice; however, an unfiled return would typically have to occur due to an oversight that was being corrected.

⁵⁰ UT: Yes, if the related company is a member of the unitary group.

⁵¹ VA: While Virginia does not have a throwback rule, the taxpayer must be subject to tax in at least one other state in order to allocate and apportion income.

⁵² VA: However, the absence of a return when the state imposes a tax is likely to controvert nexus in the destination state. See P.D. 00-79.

⁵³ WI: Limited to tangible personal property.

⁵⁴ WI: The corporation must prove that it has nexus in the destination state for an income tax or franchise tax measured by net income. In addition, for nexus to be established, the entity must have business activity not protected by Federal Public Law 86-272 in that state.

⁵⁵ WI: COMBINED REPORTING: In a combined group, nexus is determined for the unitary business as a whole. Therefore, a combined group member’s sales destined outside Wisconsin cannot be “thrown back” to Wisconsin if any member of the combined group has nexus relating to the unitary business in the destination state. SEPARATE REPORTING: If the corporation is required to file as a separate corporation, nexus is determined on a separate entity basis.

Sourcing Receipts

Trend Towards Market-Based Sourcing Continues, States Provide Industry-Specific Sourcing Rules

When preparing corporate income tax returns, multistate corporations must apportion a percentage of their business income to each state in which it has nexus using the state's apportionment formula. Although apportionment formulas used by the states vary, each formula has a sales factor that takes into account the percentage of a corporation's total sales receipts that are sourced to the state.

For purposes of apportioning income taxes, receipts from sales of tangible personal property are commonly sourced to states using a different methodology than receipts from other sales, including receipts from leases, licenses or rentals of tangible personal property, services, intangibles and cloud computing or software as a service (SaaS) transactions.

Under section 16 the Uniform Division of Income for Tax Purposes Act (UDITPA), which is used by nearly all the states, sales of tangible personal property are sourced to a state if the property is delivered or shipped to a purchaser, other than the U.S. government, within the state (destination-based sourcing). Sales of tangible personal property are sourced to a state using an origin-based method if the property is shipped from a location in the state when the purchaser is the U.S. government or when the taxpayer is not taxable in the purchaser's state. Special sourcing rules may also apply when the property is purchased by the U.S. government.

For receipts other than those from sales of tangible personal property, states generally follow the cost of performance method, the market-based sourcing method, or a hybrid of the two approaches.

Cost of Performance

For years, nearly all states used the cost of performance rule when sourcing receipts from sales other than sales of tangible personal property, as set forth by the since-revised section 17 of UDITPA. Under the cost of performance rule, these receipts are sourced to a state if the income-producing activity is performed entirely in the state.

While a large number of states still follow this approach, jurisdictions differ in the way this sourcing method is applied when the income-producing activity is performed in more than one state. The majority of these states use an "all-or-nothing" approach, where all of the receipts are sourced to a single jurisdiction based on where the costs of performance occur. Other states use a proportionate method, or pro rata approach, in which receipts from the income-producing activity are sourced proportionately to each state where the cost of activity occurs.

Market-Based Sourcing

A growing number of states have moved away from the cost of performance method and now source receipts from sales other than sales of tangible personal property using a market-based approach based on the state where the taxpayer's market for the sale is located.

"We will see movement in this direction, but at a slower pace than in the previous five years," Harley Duncan, a state and local tax managing director in KPMG's Washington National Tax Practice, told Bloomberg BNA in an April 14 e-mail. "We are reaching an equilibrium where states have made their choice on how they wish to source and are comfortable with it. Adoption of a [Multistate Tax Commission] rule and continuing movement by one's neighbors will likely push states slowly in this direction," he added.

However, others believe the trend towards market-based sourcing will happen at a faster pace. "I think that the MTC shifting away from the income producing activity test to the market-based sourcing test with their recent changes is going to accelerate that trend," Brian Kirkell, a principal at RSM US LLP in Washington, D.C., told Bloomberg BNA on April 12.

As more states adopt market-based sourcing, additional issues will arise that taxpayers must be prepared to address. "If you're looking at it from just an administrative burden standpoint, you're trading one tough method for an-

For more information, see:

Corporate Income Tax Navigator at 6.3.2 and 6.5.

Portfolio 1150-2nd: Income Taxes: Principles of Formulary Apportionment at 1150.07.

Income Tax Sourcing Tool

other tough method,” Marilyn Wethekam, a partner at Horwood Marcus & Berk Chartered in Chicago, Illinois, told Bloomberg BNA on April 10.

Although market-based sourcing continues to gain widespread acceptance, the implementation of this method varies greatly among market-based sourcing states and takes into consideration a number of different factors when determining the location of the market. Implementation of this approach may also vary among categories of receipts within a single state.

“The problem is that market-based sourcing as a concept is okay. But it’s not a panacea for the lack of uniformity in this area, simply because every state that has enacted it has enacted different rules,” Kirkell said. “What they are ultimately doing here is creating the exact same situation that was causing us so many problems before, which is that nobody can walk in and say ‘all right, here is the one rule that’s being applied across the state,’ ” he added.

To further complicate sourcing issues, some states apply different sourcing methods to different categories of receipts (e.g., receipts from services, intangibles or cloud computing transactions) even when the different receipts are all considered receipts from sales other than sales of tangible personal property. Yet other states use the same sourcing method for receipts from all types of sales other than sales of tangible personal property, but will apply the method differently depending on the type of transaction from which the receipts arose. In many cases, states define “the market” and “cost of performance” differently and taxpayers are left to interpret complex sourcing statutes.

The split between states that employ a market-based approach and a cost of performance approach is likely to draw grievances from both taxpayers and revenue departments alike. Taxpayers will be unhappy when receipts from the same transaction are sourced to multiple states with competing sourcing methods and rules—leading to an aggregate sales factor greater than 100 percent.

Likewise, state tax departments are likely to protest that they are not getting their fair share if a taxpayer’s aggregate sales factor is less than expected. This situation may occur when receipts are not sourced to any state because of variation in sourcing methods and rules between the states.

Market-Based Sourcing Principles Used When Applying Cost of Performance Rules

Recently, even those states retaining their cost of performance methodologies have applied market-based sourcing rules to identify the location where the income producing activity occurred.

Many practitioners expressed concerns with such an approach and warned taxpayers to prepare for audits surrounding this issue. “You get stuck in an audit gotcha game where you’re filing your return in compliance with the statute as passed by the Legislature and signed by the Governor. But then on audit, here comes a tax enforcer saying, ‘oh, we’re not going to follow the statute,’ ” Stephen Kranz, a partner at McDermott Will & Emery in Washington, D.C., told Bloomberg BNA on April 12.

Bruce Ely, a tax partner at Bradley Arant Boult Cummings LLP in Birmingham, Alabama, addressed similar audit concerns with Bloomberg BNA on April 14. “Obviously, multistate taxpayers need clear guidance and they need certainty. And with the states doing this heads I win, tails you lose type of audit on these issues, it’s very frustrating to corporate taxpayers,” he said.

In some instances, however, this uncertainty may benefit taxpayers rather than burden them. “I think that taxpayers can protect themselves by taking return filing positions that are most beneficial to them yet meet the constitutional requirements and fairly reflect the business that’s being done,” Kranz said.

Bloomberg BNA Survey Identifies States’ Sourcing Policies

In the survey, we asked the states to identify the methodology used to source receipts from tangible personal property, real property, services, intangibles and cloud computing or software as a service (SaaS) transactions. We also asked whether receipts from a variety of transactions would be sourced to the state.

Sales of Tangible Personal Property

Despite the movement away from the traditional cost of performance sourcing rules provided by UDITPA § 17 for receipts from sales other than sales of tangible personal property, destination-based sourcing rules mirroring those in UDITPA § 16 continue to be used by almost every state for receipts from sales of tangible personal property. When asked whether they apply this method, 95 percent of the states responded “yes.” Only one state, Texas, said “no.” Texas indicated it that uses a sourcing method other than destination-based or origin-based sourcing but, when asked to identify what other method is used, stated “sales of tangible personal property result in Texas receipts when the property is delivered in Texas to a purchaser, regardless of the ultimate destination of the property.”

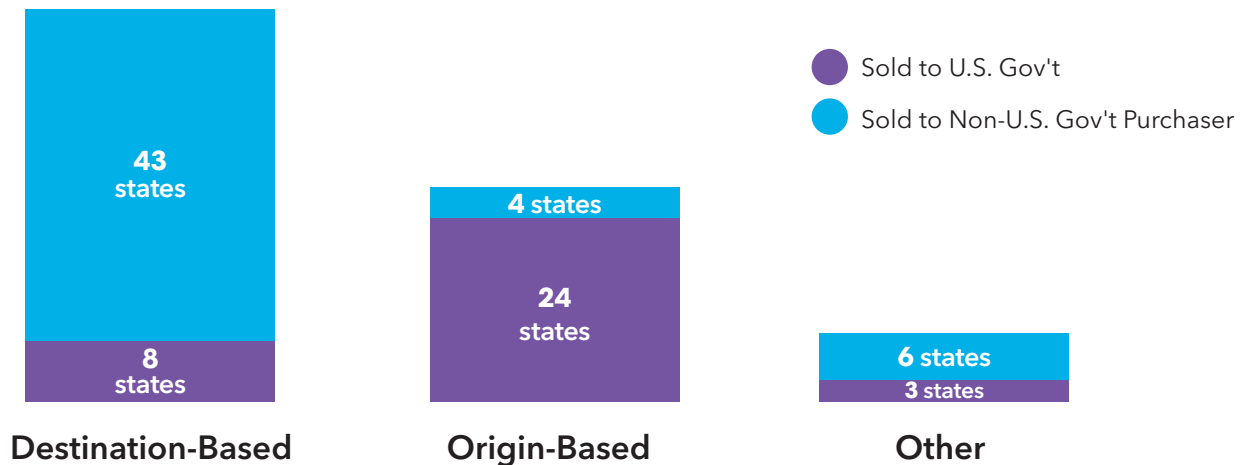
Four states also indicated that they use origin-based sourcing, but most of these states included a comment limiting the application of this rule.

The survey also asked questions differentiating between the rules used to source receipts from sales of tangible personal property purchased by the U.S. government from sales to non-U.S. government purchasers.

The states’ responses to whether origin-based or destination-based sourcing is used when tangible personal property is sold to the U.S. government were generally the opposite of those for sales to other purchasers. Most states — 24 — said they use origin-based sourcing, with only a limited number applying destination-based sourcing. However, 15 states indicated that they do not have special rules for sales to the U.S. government.

Unlike the uniformity seen almost nationwide when sourcing sales of tangible personal property, the states are all over the map when it comes to sourcing receipts from other sales. We asked the states to identify the sourcing methods used for receipts from each of the following categories:

Sourcing Methods for Receipts from Sales of Tangible Personal Property



NOTE: Some states provided more than one "yes" response. DC and NYC are treated as states for purposes of this chart. NV, SD, WA and WY do not impose a corporate tax based on income. OH, NY and SC did not participate in this portion of the survey. As a result, these 7 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

- Leases, licenses or rentals of tangible personal property,
- Services,
- Intangibles, and
- Cloud computing or software as a service (SaaS) transactions.

The results highlight the wide variety in sourcing methods used by the states for each category. This variation follows the same trends seen last year, with cost of performance rules being used by most states for receipts from services, market-based sourcing rules being used by most states for receipts from intangibles and cloud computing or SaaS transactions, and sourcing rules other than cost of performance or market-based rules being used most often for receipts from leases, licenses or rentals of tangible personal property.

Services

Even though most states still source receipts from services based on the costs of performance, the number of jurisdictions using market-based sourcing increased to 15, with the addition of Connecticut this year. The number of states applying cost-of-performance sourcing rules for services remained steady at 21 states again this year.

Only California said it uses both cost of performance and market-based sourcing for services. Pennsylvania indicated that it uses both market-based sourcing and a method other than cost of performance or market-based sourcing for services.

Intangibles

The responses to which sourcing method is applied to receipts from intangibles mirrors the response for receipts from services. The 2017 survey saw an increase in the number of market-based sourcing states while the number of cost of performance states did not change.

By revising their answers to reflect only the use of market-based sourcing this year, Connecticut and Vermont widened the gap between market-based states (19) and cost of performance states (16).

Some states indicated that they use multiple methods to source receipts from intangibles. For example, Illinois said it sources receipts using both cost of performance and market-based sourcing. Florida and Utah indicated that they use both market-based sourcing and a method other than cost of performance or market-based sourcing. Hawaii said it uses cost of performance and a method other than cost of performance or market-based sourcing.

Two states, Louisiana and Oklahoma, may present an additional challenge for taxpayers sourcing receipts from intangibles. Neither state indicated the methodology used for sourcing these receipts and Oklahoma said its policy is not yet developed.

Sourcing Method for Receipts from Sales Other Than Sales of Tangible Personal Property

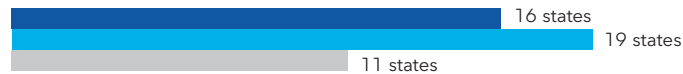
Leases, Licenses or Rentals of TPP



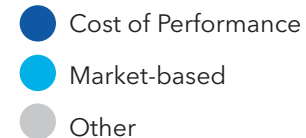
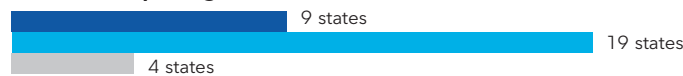
Services



Intangibles



Cloud Computing or SaaS Transactions



NOTE: Some states provided more than one “yes” response. DC and NYC are treated as states for purposes of this chart. NV, SD, WA and WY do not impose a corporate tax based on income. OH, NY and SC did not participate in this portion of the survey. As a result, these 7 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

Cloud Computing

In order to properly source receipts from cloud computing or SaaS transactions, a corporation must first characterize these receipts to determine which of the state’s sourcing rules should be applied. As in previous years, we asked the states whether they characterize receipts from in-state customers that access an out-of-state corporation’s software via a third-party’s cloud infrastructure as receipts from sales of tangible personal property, leases, licenses or rentals of tangible personal property, intangibles or services. We also asked them to identify the method that is generally used when sourcing cloud computing or SaaS receipts.

Receipts from cloud-based transactions are most likely to be characterized as receipts from services, with 14 states responding in this manner. Included among these states for the first time is Colorado. Florida, on the other hand, no longer definitively characterizes these receipts as services, noting that this characterization depends on the facts and circumstances.

Receipts characterized as a sale, lease, license or rental of intangible personal property came in second with six states indicating that they use this characterization again this year.

The increased popularity of market-based sourcing is clearly demonstrated by the states’ responses to the question addressing the sourcing method used for cloud computing receipts. Not only is it still the most common method used, it also still has the largest increase over cost of performance. Nineteen states said market-based sourcing rules are followed, but only nine states follow cost of performance rules.

“Although cloud computing and software as a service transactions are not new, they are offerings that have unique characteristics that make them difficult to categorize,” Priya D. Nair, a state and local tax manager at Grant Thornton’s National Tax Office in Washington, D.C., told Bloomberg BNA in an April 13 e-mail. “As a result, you see a lack of uniformity among states as well as a lack of guidance from states on how they should be categorized and sourced,” she added.

The states’ continued struggles with developing definitive policies on this issue are clearly reflected in this year’s survey results. Fifteen states, including California, Georgia and Louisiana, did not identify how these receipts would be characterized, responding with either “no response” or “not applicable.” Of these, eight states also provided the same responses when asked about the sourcing method used.

Hawaii, for example, said receipts from these transactions are subject to Hawaii income tax but that Hawaii law does not specify how the receipts are characterized.

Other states, such as Arkansas and North Carolina, were able to characterize their receipts but did not respond to questions regarding the sourcing method.

The states’ difficulty in determining clear policies in this area may be rooted multiple causes. “It’s a fundamental lack of understanding,” according to Wethekam. However, it’s a tough issue for the states and “they don’t always want to tackle tough issues. They just kind of hope somebody else will do it,” she added.

The issue can be blamed in part on the fact that “many of those laws were written in the 1970s,” Kirkell said. “When the states were writing these laws, they weren’t thinking about the Internet. They weren’t thinking about this whole concept of digital goods and services. Because the only people dealing in that were large businesses and the government,” he explained.

Like Wethekam, Kirkell also said the states may simply be choosing not to act on this issue. “We’ve had situations where states don’t want to issue policies because what they are looking to do is to pick their positions based upon the taxpayer,” he noted.

“[Cloud computing] is probably one of the more difficult areas for states (and the federal government) as shown by the variability,” Duncan said, adding that “taxpayers need to continue to seek guidance. Absent that, taxpayers need to take principled, well-documented positions.”

Survey Results Identify Industry-Specific Sourcing Rules

We also asked the states to identify the sourcing methods they apply to receipts received by taxpayers in certain industries and to indicate whether those rules are industry-specific. As in previous years, we addressed industry-specific sourcing rules for seven different industries: airlines; banks and financial services companies; construction contractors; film, television and radio broadcasters; oil and gas pipelines; telecommunications and ancillary services providers; and trucking companies.

Of these industries, the use of industry-specific rules was most common for airlines, with 33 states indicating they provide special sourcing rules. Almost half of these states (14) also said that their rules are the same as, or substantially similar to, the Multistate Tax Compact Special Industry Rules for Airlines in Reg. IV.18.(e).

Industry-Specific Sourcing Rules

Airlines



Banks & Financial Service Companies



Construction Contractors



Film, Television & Radio Broadcasting Companies



Oil & Gas Pipeline Companies



Telecommunications & Ancillary Service Providers



Trucking Companies



NOTE: DC and NYC are treated as states for purposes of this chart. NV, SD, WA and WY do not impose a corporate tax based on income. OH, NY and SC did not participate in this portion of the survey. As a result, these 7 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

Taxpayers in California, Florida, Iowa and Oregon should pay careful attention to their state’s sourcing rules. Each of these states indicated that they apply industry-specific rules for all seven of the industries addressed. Taxpayers in Delaware and Vermont, however, may only need to be familiar with the state’s general sourcing rules. Both states said that they do not have industry-specific rules for any of the seven industries.

The states were asked to identify the rules and guidance taxpayers should refer to in the event that an alternative apportionment methodology is invoked and whether they conformed to specific provisions of the MTC’s Multistate Tax Compact and model regulations. Their answers to these questions, and those addressing sourcing methodologies and rules, can be found in the charts on the following pages.

Sourcing Receipts: Sales of Tangible Personal Property (Part 1 of 2)

State ¹	Destination-based ²	Origin-based ³	Other ⁴	If other method, please explain
Alabama	Yes	No Response ⁵	Yes	If Alabama's drop shipment rule applies, then if the sale were initiated by an Alabama sales office, then even though the shipment may have been shipped from out of state, if the sale is not taxable in either the destination or origin state, then it would be sourced.
Alaska	Yes	No	No	
Arizona	Yes	No	No	
Arkansas	Yes	Yes ⁶	No	
California	Yes ⁷	No ⁸	No	
Colorado	Yes	No	No	
Connecticut	Yes	No	No	
Delaware	Yes	No	No	
District of Columbia ⁹	Yes	No	Yes	If principle place of business is district and taxpayer is not subject to tax in other state.
Florida	Yes	No	No	
Georgia	Yes	No	No	
Hawaii	Yes ¹⁰	Yes ¹¹	No	
Idaho ¹²	Yes ¹³	No ¹⁴	Not Applicable	
Illinois	Yes	Yes ¹⁵	No	
Indiana	Yes	No	No	
Iowa	Yes	No	No	

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is delivered or shipped to a purchaser within your state (destination-based sourcing).

³ Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory, or other place of storage in your state (origin-based sourcing).

⁴ Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor using a method other than destination-based sourcing or origin-based sourcing.

⁵ AL: If thrown back.

⁶ AR: Yes for Govt. Sales and if not taxable in destination state.

⁷ CA: See 18 CCR §25135(a)(1)(A).

⁸ CA: No, unless the taxpayer is not taxable in the state of the purchaser. (See 18 CCR §25135(a)(1)(B)).

⁹ DC: District does not follow *Finnigan* rules.

¹⁰ HI: See section 18-235-36-01, Hawaii Administrative Rules.

¹¹ HI: *Id.*

¹² ID: See Idaho Code section 63-3027(q).

¹³ ID: Unless corporation is protected by P. L. 86-272.

¹⁴ ID: Will include such sales in Idaho numerator if Idaho's throwback rule applies where the corporation is not taxable in the state of the purchaser.

¹⁵ IL: If the taxpayer is not subject to tax in the destination state.

State ¹	Destination-based ²	Origin-based ³	Other ⁴	If other method, please explain
Kansas	Yes	No	No	
Kentucky	Yes	No	No	
Louisiana	Yes	No	No	
Maine	Yes	No ¹⁶	No	
Maryland	Yes	No	No	
Massachusetts	Yes ¹⁷	No	Yes	There is also a throwback sales provision. See GL c. 63, s. 38(f) and 830 CMR 63.38.1(c) 2.
Michigan	Yes	No	Not Applicable	
Minnesota	Yes	No	No	
Mississippi ¹⁸	Yes	No	No	
Missouri	Yes	No	Yes	If 3-factor apportionment is elected, it is destination based; if single sales factor is elected (143.451.2), it is a combination of origin and destination sourcing; if optional single-sales factor is elected (143.451.3), it is destination based. See 143.451.2 - Single Sales Factor and 143.451.3 - Optional Single Sales Factor.
Montana	Yes	Depends ¹⁹	No	
Nebraska	Yes	No	Not Applicable	
New Hampshire	Yes	Depends ²⁰	No	
New Jersey	Yes	No	No	
New Mexico	Yes	No	No ²¹	
New York City	Yes²²	No	No	
North Carolina	Yes	No	No	
North Dakota	Yes	No	No	
Oklahoma ²³	No Response	No Response	No Response	
Oregon	Yes ²⁴	No	Yes ²⁵	
Pennsylvania	Yes	No	No	
Rhode Island	Yes	No	No	

¹⁶ ME: Yes if the sales are to the federal government.

¹⁷ MA: See GL c. 63, s. 38(f).

¹⁸ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.09(3)(b) of the Mississippi Administrative Code.

¹⁹ MT: Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory or other place of storage in your state if the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

²⁰ NH: See N.H. Admin. Rules, Rev 304.04.

²¹ NM: See NM Section 7-4-17 NMSA 1978 and corresponding Regulation 3.5.17.8.

²² NYC: Only if the out of state corporation has nexus with the City.

²³ OK: Policy not yet developed.

²⁴ OR: OAR 150-314.665(2)-(A) adopts provisions from the MTC model apportionment regulations and requires sales of TPP to be sourced using a delivery approach - not a final destination approach.

²⁵ OR: *Id.*

State¹	Destination-based²	Origin-based³	Other⁴	If other method, please explain
Tennessee ²⁶	Yes	No	No	
Texas	No	No	Yes	Sales of tangible personal property result in Texas receipts when the property is delivered in Texas to a purchaser, regardless of the ultimate destination of the property. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. See Rule 3.591(e)(29).
Utah	Yes	No ²⁷	No	
Vermont	Yes	No	No	
Virginia	Yes ²⁸	No	No	
West Virginia	Yes	No	No	
Wisconsin	Yes	Yes ²⁹	No	

²⁶ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed April 22, 2015, implements market-based sourcing in Tennessee.

²⁷ UT: Except throwback.

²⁸ VA: See Va. Code §58.1-415; 23 VAC 10-120-220.

²⁹ WI: If taxpayer does not have nexus in the state of destination. See sec. 71.25(9)(b), Wis. Stats.

Sourcing Receipts: Sales of Tangible Personal Property (Part 2 of 2)

State ¹	In-state delivery and transfer to another state ²	In-state delivery ³	Shipped from state of origin to another state and diverted en route to purchaser in-state ⁴	Shipped from in-state location and corp. is taxable in purchaser's state ⁵	Shipped from in-state location and corp. is not taxable in purchaser's state ⁶	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is taxable ⁷	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is not taxable ⁸
Alabama	Yes	Yes	Yes	No	Yes	No	Yes
Alaska	Not Applicable	Not Applicable	Not Applicable	No	Yes	No	Yes
Arizona	Yes	Yes	Yes	No	No	No	No
Arkansas	Depends	Yes	Yes	Yes	Yes	No	No
California	Depends ⁹	Yes	Yes	No	Yes	No	Yes
Colorado	No	Yes	Yes	No	Yes	No	Yes
Connecticut	Yes	Yes	No Response	No	No	No	No
Delaware	Yes	Yes	Yes	No Response	No Response	No	No
District of Columbia	Yes ¹⁰	Yes ¹¹	Yes ¹²	No ¹³	Yes ¹⁴	Yes¹⁵	Yes
Florida	Yes	Yes	Yes	No	No¹⁶	No	No ¹⁷
Georgia	Yes	Yes	Yes	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Property is delivered or shipped to a purchaser in your state and subsequently transferred by the purchaser to another state.

³ Property is delivered or shipped to the ultimate recipient in your state at the purchaser's direction.

⁴ Property is shipped from the state of origin to a consignee in another state and, while en route to the consignee, is diverted to a purchaser in your state.

⁵ Property is shipped from a location in your state and the corporation is taxable in the purchaser's state.

⁶ Property is shipped from a location in your state and the corporation is not taxable in the purchaser's state.

⁷ Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is taxable?

⁸ Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is not taxable?

⁹ CA: 18 CCR 25135(a)(3) provides that property delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. However, see *McDonnell Douglas Corporation v. Franchise Tax Board* (1994) 26 Cal.App.4th 1789; *Appeal of Mazda Motors of America* (1994) 94-SBE-009.

¹⁰ DC: District does not follow *Finnigan* rules.

¹¹ DC: *Id.*

¹² DC: *Id.*

¹³ DC: *Id.*

¹⁴ DC: *Id.*

¹⁵ DC: *Id.*

¹⁶ **FL: The corporation must be able to apportion income.**

¹⁷ **FL: *Id.***

State ¹	In-state delivery and transfer to another state ²	In-state delivery ³	Shipped from state of origin to another state and diverted en route to purchaser in-state ⁴	Shipped from in-state location and corp. is taxable in purchaser's state ⁵	Shipped from in-state location and corp. is not taxable in purchaser's state ⁶	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is taxable ⁷	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is not taxable ⁸
Hawaii	Yes ¹⁸	Yes ¹⁹	Yes ²⁰	No	Yes	No ²¹	Yes ²²
Idaho ²³	Yes	Yes	Yes	No	Yes	No	Yes
Illinois	Yes	No	Yes	No	Yes	No	Yes
Indiana	Yes	Yes	Yes	No	No	No ²⁴	No
Iowa	Yes ²⁵	Yes	Yes	Depends ²⁶	Depends ²⁷	No	No
Kansas	Yes	Yes	Yes	No	Yes	No	No
Kentucky	No	Yes	Yes	No	No ²⁸	No	No
Louisiana	Yes	No	No	Yes	No	Yes	No
Maine	Yes ²⁹	Yes	Yes ³⁰	No ³¹	No ³²	No	No
Maryland	Yes	Yes	Yes	No	No ³³	No	No
Massachusetts	Depends	Yes	Depends	Depends	Yes	Yes	Depends
Michigan	Yes	Yes	Yes	No ³⁴	No ³⁵	No	No ³⁶
Minnesota	Yes	Yes	Yes	No Response ³⁷	No Response ³⁸	No	No
Mississippi ³⁹	Yes	Yes	Yes	No	Yes	No	Yes
Missouri ⁴⁰	Yes	Yes	Yes	No	Yes ⁴¹	No	No
Montana	Yes	Yes	Yes	No	Yes	No	Depends

¹⁸ HI: See section 18-235-36-01, Hawaii Administrative Rules.

¹⁹ HI: *Id.*

²⁰ HI: *Id.*

²¹ HI: *Id.*

²² HI: *Id.*

²³ ID: See Idaho Code section 63-3027(q).

²⁴ IN: The answer assumes the origin state is not Indiana.

²⁵ IA: Rule 701-54.5(3) states that property shall be deemed to be delivered or shipped to a purchaser in Iowa if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Therefore, it depends on whether the shipment terminated in Iowa.

²⁶ IA: Gross receipts are includable in the numerator of the apportionment factor if the shipment terminated in Iowa.

²⁷ IA: *Id.*

²⁸ KY: See 103 KAR 16:270, Section 3(2).

²⁹ ME: Depending on facts and circumstances.

³⁰ ME: *Id.*

³¹ ME: Unless sold directly to the United States Government.

³² ME: Amount is thrown out of the denominator.

³³ MD: Maryland does not have a throwback rule.

³⁴ MI: Answer assumes the purchaser's state is not this state.

³⁵ MI: The facts do not disclose whether the corporation is taxable in any other state. If the corporation's business activities were confined solely to Michigan, the tax base would be allocated to Michigan. See MCL 206.661. If the corporation was taxable both within and outside Michigan and the taxpayer must apportion, then no, the sale would not be included in the numerator of the sales factor.

³⁶ MI: *Id.*

³⁷ MN: The "shipped from" location is not considered. The sale is attributed to the state where the property is delivered or shipped.

³⁸ MN: *Id.*

³⁹ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.09(3)(b) of the Mississippi Administrative Code.

⁴⁰ MO: Answers are for 3-factor apportionment.

⁴¹ MO: For single factor apportionment, this answer would be "no."

State ¹	In-state delivery and transfer to another state ²	In-state delivery ³	Shipped from state of origin to another state and diverted en route to purchaser in-state ⁴	Shipped from in-state location and corp. is taxable in purchaser's state ⁵	Shipped from in-state location and corp. is not taxable in purchaser's state ⁶	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is taxable ⁷	Property sold by in-state salesperson to out-of-state purchaser is shipped from state in which corp. is not taxable ⁸
Nebraska	Yes	Yes	Yes	No Response ⁴²	No Response ⁴³	No	No
New Hampshire	Depends	Depends	Depends	No	Yes	Depends	Depends
New Jersey	Yes	Yes	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	No	Yes	No	Yes
New York City	Yes	Yes	No Response	No Response	No Response	No	No
North Carolina	Yes	Yes	Yes	No	No	No	No
North Dakota	Yes	Yes	Yes	No	Yes	No	Yes
Oklahoma	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	Yes	Yes	No	Yes	No	Yes
Pennsylvania	No	Yes	Yes	No	No	No	No
Rhode Island	No	Yes	Yes	No	Yes	No	No
Tennessee ⁴⁴	Yes	Yes	Yes	No	No	No	No
Texas	No Response ⁴⁵	No Response ⁴⁶	No Response ⁴⁷	No	No	No	No
Utah	Yes	Yes	Yes	No	Yes	No	Yes
Vermont	Yes	Yes	Yes	No	Yes	No Response	No Response
Virginia	Yes ⁴⁸	Yes ⁴⁹	No ⁵⁰	No	No	No ⁵¹	No ⁵²
West Virginia	No	Yes	No	No	No	No	No
Wisconsin	Yes	Yes	Yes	No ⁵³	Yes	No	Yes

⁴² NE: Nebraska does not have a throwback rule, so if that is the question, the answer is no. If the question is about destination sourcing, there is not enough information to answer.

⁴³ NE: *Id.*

⁴⁴ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

⁴⁵ TX: Sales of tangible personal property result in Texas receipts when the property is delivered in Texas to a purchaser, regardless of the ultimate destination of the property. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. *See* Rule 3.591(e)(29).

⁴⁶ TX: *Id.*

⁴⁷ TX: *Id.*

⁴⁸ VA: *See* VA Code §52.1-415; 23 VAC 10-120-220. Sales of tangible personal property are in Virginia if such property is received in Virginia by the purchaser. In the case of a direct delivery to a person designated by the purchaser, a sale of such property is in Virginia if such property is ultimately received in Virginia by such designated person. Receipts and transfers by persons other than the purchaser, or a designated ultimate recipient, are part of the transportation process and not considered in assigning sales to Virginia or any other state. A receipt by a person is a direct delivery to such person unless some other person is known to be the ultimate recipient at or before the time of first shipment. Actual treatment depends on facts and circumstances. *See* the Department's Laws, Rules and Decisions site for more information.

⁴⁹ VA: *Id.*

⁵⁰ VA: *Id.*

⁵¹ VA: *See* Va. Code §58.1-415; 23 VAC 10-120-220.

⁵² VA: *Id.*

⁵³ WI: This answer assumes the corporation has nexus in the other state, using WI's nexus standards.

Sourcing Receipts: Sales of Tangible Personal Property to the U.S. Government

State ¹	Special rules for U.S. government sales ²	Destination-based ³	Origin-based ⁴	Other ⁵	Property delivered or shipped to in-state purchaser ⁶	Property shipped from in-state location ⁷
Alabama	Yes	No	Yes	Not Applicable	Yes	Depends
Alaska	Yes	No	Yes	No	Not Applicable	Not Applicable
Arizona	Yes	No	No	Yes ⁸	No ⁹	No ¹⁰
Arkansas	Yes	No	Yes	No	No	Yes
California	Yes ¹¹	No	Yes	No	No	Yes ¹²
Colorado	Yes	Yes	No	Not Applicable	Yes	No
Connecticut	No Response ¹³	Yes ¹⁴	No ¹⁵	No ¹⁶	Yes	No
Delaware	No	Not Applicable	Not Applicable	Not Applicable	No Response	No Response
District of Columbia	Yes	No	Yes	No	Yes	Yes
Florida	Yes ¹⁷	Yes	No	No	Yes	Depends¹⁸
Georgia	No	No Response	No Response	No Response	Yes	No
Hawaii	Yes ¹⁹	No ²⁰	Yes ²¹	No ²²	No	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state provide special rules for sourcing sales of tangible personal property to the U.S. government?

³ Are sales of tangible personal property to the U.S. government sourced to your state based on destination?

⁴ Are sales of tangible personal property to the U.S. government sourced to your state based on origin?

⁵ Are sales of tangible personal property to the U.S. government sourced to your state based on something other than destination or origin?

⁶ Receipts from sales of tangible personal property purchased by the U.S. Government are included in the numerator of the corporation's sales factor when the property is delivered or shipped to the purchaser in your state.

⁷ Receipts from sales of tangible personal property purchased by the U.S. Government are included in the numerator of the corporation's sales factor when the property is shipped from an office, store, warehouse, factory or other place of storage in your state.

⁸ AZ: See R15-2D-805. Sales of Tangible Personal Property to the United States Government. Sales of tangible personal property to the United States Government are not included in the numerator of the sales factor. (They are included in the denominator.)

⁹ AZ: Receipts from sales of tangible personal property purchased by the U.S. Government are not included in the numerator of the sales factor, only the denominator.

¹⁰ AZ: *Id.*

¹¹ CA: See 18 CCR §25135(b).

¹² CA: See RTC §25135(a)(2).

¹³ CT: See Conn. Gen. Stat. §12-218(j)(3).

¹⁴ CT: *Id.*

¹⁵ CT: *Id.*

¹⁶ CT: *Id.*

¹⁷ FL: See Rule 12C-1.015(1)(e), F.A.C.

¹⁸ **FL: Depends on the destination. See Rule 12C-1.0155(2)(a), F.A.C.**

¹⁹ HI: See section 18-235-36-02, Hawaii Administrative Rules.

²⁰ HI: *Id.*

²¹ HI: *Id.*

²² HI: *Id.*

State ¹	Special rules for U.S. government sales ²	Destination-based ³	Origin-based ⁴	Other ⁵	Property delivered or shipped to in-state purchaser ⁶	Property shipped from in-state location ⁷
Idaho	Yes	No	Yes	Not Applicable	Depends ²³	Yes
Illinois	Yes	No	Yes	No	No	Yes
Indiana	Yes	No	Yes	No	No	Yes
Iowa	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	Yes	No	Yes	No	No	Yes
Kentucky	Yes	No	Yes	No	No ²⁴	Yes ²⁵
Louisiana	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	Yes	No	Yes	No	No	Yes
Maryland	No	Yes	No	No	Yes	No
Massachusetts	Yes	No	No	Yes ²⁶	No	No
Michigan	No	Not Applicable	Not Applicable	Not Applicable	Yes	No
Minnesota	No	Yes	No	No	Yes	No
Mississippi ²⁷	Yes	No	Yes	No	No	Yes
Missouri	No	No	Yes	No	No	Yes
Montana	Yes	No	Yes	No	No	Yes
Nebraska	Yes	No	Yes	Not Applicable	No ²⁸	Yes
New Hampshire	Yes	No	Yes	No	Depends	Yes
New Jersey	No	Not Applicable	Not Applicable	Not Applicable	Yes	Yes
New Mexico	Yes	No	Yes	No	No	Yes
New York City	No	Yes	No	No	Yes	No
North Carolina	Yes	Yes	No	No	Yes	Yes
North Dakota	Yes	No	Yes	No	No	Yes
Oklahoma	No	Not Applicable	Not Applicable	Not Applicable	No Response	No Response
Oregon	Yes	No	Yes	No	No	Yes
Pennsylvania	No	Not Applicable	Not Applicable	Not Applicable	Yes	No
Rhode Island	No	Not Applicable	Not Applicable	Not Applicable	Yes	No
Tennessee	Yes	No	Yes	Not Applicable	No	Yes

²³ ID: Depends on where it's shipped from.

²⁴ KY: See 103 KAR 16:270, Section 3.

²⁵ KY: *Id.*

²⁶ MA: Sales of TPP to the US or any agency etc. for resale to a foreign government or any agency or instrumentality thereof are deemed not to be MA sales.

²⁷ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.09(3)(c) of the Mississippi Administrative Code.

²⁸ NE: Assuming the product is shipped from Nebraska.

State ¹	Special rules for U.S. government sales ²	Destination-based ³	Origin-based ⁴	Other ⁵	Property delivered or shipped to in-state purchaser ⁶	Property shipped from in-state location ⁷
Texas	No	No ²⁹	No ³⁰	Yes ³¹	No Response ³²	No Response ³³
Utah	Yes	No	Yes	Not Applicable	No	Yes
Vermont	Yes	No	No	No	No	No
Virginia	No ³⁴	Not Applicable	Not Applicable	Not Applicable	Yes	No
West Virginia	Yes	No	Yes	No	Yes	Yes
Wisconsin	Yes	Yes	Yes	No	Yes	Yes ³⁵

²⁹ TX: Sales of tangible personal property result in Texas receipts when the property is delivered in Texas to a purchaser, regardless of the ultimate destination of the property. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or transportation vehicles that the purchaser leases or owns. See Rule 3.591(e)(29).

³⁰ TX: *Id.*

³¹ TX: *Id.*

³² TX: *Id.*

³³ TX: *Id.*

³⁴ VA: See P.D. 99-99.

³⁵ WI: If delivered to the federal government outside of WI, and the taxpayer is not within the taxing jurisdiction of the other state, receipts are included in the numerator.

Sourcing Receipts: Leases, Licenses or Rentals of Tangible Personal Property

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Used entirely in-state ⁵	Used partially in-state ⁶	Located entirely in-state ⁷	Located partially in-state ⁸	Other ⁹
Alabama	No	No	Depends ¹⁰	Yes	Yes	Yes	Yes	No
Alaska	Yes	No	Yes	Yes	Yes	Yes	Yes	No
Arizona	No	Yes	No	Yes	Yes	Yes	Yes	No
Arkansas	No	No	No ¹¹	Yes	Yes	Yes	Yes	No
California	No	No	No	No	Depends ¹²	Yes ¹³	Yes	No
Colorado	No	No	No	No	No	No¹⁴	Yes ¹⁵	No
Connecticut ¹⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware ¹⁷	No	No	No	No	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² All of the receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if more income-producing activity is performed in your state than any other state, based on cost of performance (cost of performance sourcing, plurality method).

³ A proportionate share of the corporation's receipts from the lease, license, or rental of tangible personal property is added to the numerator of the corporation's sales factor on a *pro rata* basis, in which the receipts are divided among the states in which the income-producing activity is performed, depending on the performance level in each state as measured by the costs of performance (cost of performance sourcing, proportionate method).

⁴ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the benefit of the income-producing activity was received in your state (market-based sourcing).

⁵ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state for the entire rental, lease or licensing period.

⁶ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state for a portion of the rental, lease or licensing period.

⁷ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state for the entire rental, lease or licensing period.

⁸ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state for a portion of the rental, lease or licensing period.

⁹ Receipts from the lease, license, or rental of tangible personal property are added to the numerator of the corporation's sales factor based on something other than cost of performance, market, place of use, or location.

¹⁰ AL: Please note Alabama's market based sourcing rule is not dependent on the "benefit" rule. Services are sourced based on delivery of the service. Receipts from the sale or use of intangibles are sourced based on where the intangible is used.

¹¹ AR: We are unaware of a circumstance where income producing activity has any bearing on sourcing leases, licenses, or rental of tangible personal property.

¹² CA: CCR §25136-2(f) provides that "sales from the rental, lease, or licensing of tangible personal property are in this state if and to the extent the tangible property is located in this state." Assuming that the property is located in this state (since it is used here), the receipts generated for the duration of time the property is located in the state would be added to the sales factor numerator.

¹³ CA: See Regulation §25136-2(e) & (f).

¹⁴ CO: Receipts are added to the extent the property was located in Colorado.

¹⁵ CO: *Id.*

¹⁶ CT: "Gross receipts from the rental, lease or license of real or tangible personal property are assignable to this state to the extent such property is situated within the state." See Conn. Gen. Stat. §12-218(b)(3).

¹⁷ DE: Delaware allocates all leasing and renting of tangible personal property within or without of Delaware on Schedule 2 of the DE corporate return.

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Used entirely in-state ⁵	Used partially in-state ⁶	Located entirely in-state ⁷	Located partially in-state ⁸	Other ⁹
District of Columbia	No	No	No ¹⁸	No ¹⁹	Yes	Yes ²⁰	Yes	No ²¹
Florida ²²	No	No	No	Yes	Yes	Yes	Yes	No
Georgia	No	No	No Response	Yes ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶	No
Hawaii	Yes ²⁷	No	No	Yes ²⁸	No ²⁹	Yes ³⁰	Yes ³¹	No
Idaho	Yes ³²	No	No	Yes	No Response ³³	Yes	No Response ³⁴	No
Illinois	No	No	No	Yes	Yes	Yes	Yes	No
Indiana	No	No	No Response ³⁵	Yes	Yes ³⁶	Yes	Yes ³⁷	No
Iowa ³⁸	No	No	Yes	Yes	Yes ³⁹	Yes	Yes ⁴⁰	No
Kansas	No	No	No	Yes	Yes	Yes	Yes	No
Kentucky	No	No	No	Yes	Yes	Yes	Yes	No
Louisiana	No ⁴¹	No ⁴²	No ⁴³	No ⁴⁴	No	No ⁴⁵	No	No ⁴⁶

¹⁸ DC: See 47-1810.02(g). For tax years beginning after 12/31/2014, the sales other than sale of tangible property is sourced based on market where it is delivered.

¹⁹ DC: *Id.*

²⁰ DC: *Id.*

²¹ DC: *Id.*

²² FL: See Rule 12C-1.0155, F.A.C.

²³ GA: Assumes the sale resulted from activities which constitute the taxpayer's regular trade or business.

²⁴ GA: *Id.*

²⁵ GA: *Id.*

²⁶ GA: *Id.*

²⁷ HI: Refer to section 18-235-37-01, Hawaii Administrative Rules.

²⁸ HI: *Id.*

²⁹ HI: *Id.*

³⁰ HI: *Id.*

³¹ HI: *Id.*

³² ID: See Idaho Code section 63-3027(r) and IDAPA 35.01.01.550 (Rule 550).

³³ ID: See Rule 550.05.b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period.

³⁴ ID: *Id.*

³⁵ IN: To some extent.

³⁶ IN: If (and to the extent) the property is used or located in Indiana, the receipts would be added to the numerator for the corporation's sales factor.

³⁷ IN: *Id.*

³⁸ IA: Iowa uses a market based approach for the apportionment factor even when tangible personal property is not sold. For leased property, this could include market, place of use, or location, depending on the factual scenario.

³⁹ IA: Gross receipts from lease, license, or rental of tangible personal property are attributable to Iowa to the extent the property is utilized in Iowa.

⁴⁰ IA: *Id.*

⁴¹ LA: Income from the lease, license or rental of tangible personal property is defined as "allocable income" in Louisiana and is directly allocated (not apportioned by formula) to the state in which the property was located when the income was earned. See La. R.S. 47:287.91 - 287.93. This income is not included in the numerator or denominator of the sales factor.

⁴² LA: *Id.*

⁴³ LA: *Id.*

⁴⁴ LA: *Id.*

⁴⁵ LA: *Id.*

⁴⁶ LA: *Id.*

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Used entirely in-state ⁵	Used partially in-state ⁶	Located entirely in-state ⁷	Located partially in-state ⁸	Other ⁹
Maine	No ⁴⁷	No ⁴⁸	Yes	Yes	Yes ⁴⁹	Yes	Yes ⁵⁰	No
Maryland	No	No	No	No	No	Yes	Yes	No
Massachusetts	No	No	No	No	No	Yes ⁵¹	Yes	No
Michigan	No	No	No	Yes	Yes ⁵²	Yes ⁵³	Yes ⁵⁴	No ⁵⁵
Minnesota	No	No	Yes ⁵⁶	Yes ⁵⁷	Yes	Yes ⁵⁸	Yes	No
Mississippi ⁵⁹	No	No	Yes	Yes	Yes	Yes	Yes	No
Missouri	Yes	No	No	No	Yes ⁶⁰	Yes ⁶¹	Yes ⁶²	Yes ⁶³
Montana ⁶⁴	Yes	No	No	Yes	Yes	Yes	Yes	No
Nebraska	No	No	No	Yes	Yes	Yes	Yes	No
New Hampshire	No	No	No	No	No	Yes	No	No
New Jersey	No	Yes	No	Yes ⁶⁵	Yes	Yes ⁶⁶	Yes	No
New Mexico	No	No	No	No	Yes	Yes ⁶⁷	Yes	No
New York City	No	No	No	Yes	Yes	Yes	Yes	No
North Carolina	No	No	No	Yes	Yes	Yes	Yes	No
North Dakota	No	No	No	Yes	Yes	Yes	Yes	No
Oklahoma ⁶⁸	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	No	No	No	No	No	No
Pennsylvania	No	No	No	Yes	Yes	Yes	Yes	Yes ⁶⁹
Rhode Island	No	No	Yes	Yes	Yes	Yes	Yes	No

⁴⁷ ME: Sales to the US government are sourced by cost of performance.

⁴⁸ ME: *Id.*

⁴⁹ ME: Receipts are apportioned based on the percentage of time used in the state.

⁵⁰ ME: *Id.*

⁵¹ MA: See 830 CMR 63.38.1(9)(c)1.e.

⁵² MI: Receipts from the lease, license or rental of TPP are determined primarily based on use in the state, but the extent of use in the state is proportionately based on the number of days of physical location of the TPP in this state to the number of days of physical location of the property everywhere during the period of the rental or lease period within the tax year. See MCL 206.665(1)(c).

⁵³ MI: *Id.*

⁵⁴ MI: *Id.*

⁵⁵ MI: *Id.*

⁵⁶ MN: Minn. Stat. Section 290.191, Subd. 5 provides that receipts from tangible personal property is attributed to the state in which the customer receives the property (market-based sourcing).

⁵⁷ MN: *Id.*

⁵⁸ MN: *Id.*

⁵⁹ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.09(3)(f) of the Mississippi Administrative Code.

⁶⁰ MO: See 12 CSR 10-2.075(60)(b). Receipts from rental/lease/licensing of tangible property are based on the property's location and a ratio is used if the property is located in multiple states.

⁶¹ MO: *Id.*

⁶² MO: *Id.*

⁶³ MO: See 143.451.2 - Single Sales Factor and 143.451.3 - Optional Single Sales Factor.

⁶⁴ MT: See Administrative Rule of Montana 42.26.257.

⁶⁵ NJ: See N.J.A.C. 18:7-8.11(a)1.

⁶⁶ NJ: *Id.*

⁶⁷ NM: NM has special rules outlined in Regulation 3.5.18.8.

⁶⁸ OK: Policy not yet developed.

⁶⁹ PA: Receipts sourced to state where property used.

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Used entirely in-state ⁵	Used partially in-state ⁶	Located entirely in-state ⁷	Located partially in-state ⁸	Other ⁹
Tennessee ⁷⁰	Yes	No	No	Yes	Yes	Yes	Yes	Not Applicable
Texas	No	No	No	Yes	No Response ⁷¹	Yes	No Response ⁷²	No
Utah	No	No	No	Yes	Yes	Yes	Yes	No
Vermont	No	No	No Response ⁷³	No Response ⁷⁴	No	Yes	No Response ⁷⁵	No
Virginia	Yes ⁷⁶	No	No	No	No	No	No	No
West Virginia	Yes ⁷⁷	No	No	No	No	No	No	No
Wisconsin	No	No ⁷⁸	Yes	Yes ⁷⁹	Yes ⁸⁰	Yes ⁸¹	Yes ⁸²	No

⁷⁰ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

⁷¹ TX: Revenues from the lease or rental of tangible personal property are apportioned to the location of the property. If the property is located both inside and outside Texas, lease or rental payments are apportioned based on the number of days the tangible personal property was used in Texas. If the amount of revenue due under the lease or rental is based on mileage, then the payments are apportioned based on the number of miles in Texas. See Rule 3.591(e)(13).

⁷² TX: *Id.*

⁷³ VT: **While not the determinative fact, it is possible that this occurs.**

⁷⁴ VT: *Id.*

⁷⁵ VT: *Id.*

⁷⁶ VA: See Va. Code §58.1-416; 23 VAC 10-120-230.

⁷⁷ WV: See W.Va. Code §11-24-7(e)(12).

⁷⁸ WI: If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the number of days the property is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the property is leased, rented, licensed, or subleased in all states having jurisdiction to tax the taxpayer during the taxable year.

⁷⁹ WI: *Id.*

⁸⁰ WI: *Id.*

⁸¹ WI: *Id.*

⁸² WI: *Id.*

Sourcing Receipts: Real Property

State ¹	Location-based ²	If no, what method is used?
Alabama	Yes	Not Applicable
Alaska	Yes	Not Applicable
Arizona	Yes	Not Applicable
Arkansas	Yes	Not Applicable
California	Yes	Not Applicable
Colorado	Yes	Not Applicable
Connecticut	Yes	Not Applicable
Delaware	Yes	Not Applicable
District of Columbia	Yes	Not Applicable
Florida	Yes	Not Applicable
Georgia	Yes ³	Not Applicable
Hawaii	Yes	Not Applicable
Idaho	Yes ⁴	Not Applicable
Illinois	Yes	Not Applicable
Indiana	Yes	Not Applicable
Iowa	Yes	Not Applicable
Kansas	Yes	Not Applicable
Kentucky	Yes	Not Applicable
Louisiana	No Response ⁵	No Response
Maine	Yes	Not Applicable
Maryland	Yes	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² For purposes of sourcing an out-of-state corporation's receipts from real property, does your state source receipts from real property based on the location of the property?

³ GA: Assumes the sale resulted from activities which constitute the taxpayer's regular trade or business.

⁴ ID: See Idaho Code section 63-3027(r) and IDAPA 35.01.01.550 (Rule 550).

⁵ LA: Income from the lease or rental of real property is defined as "allocable income" in Louisiana and is directly allocated (not apportioned by formula) to the state in which the property is located. See La. R. S. 47:287.91 - 287.93. This income is not included in the numerator or denominator of the sales factor.

State ¹	Location-based ²	If no, what method is used?
Massachusetts	Yes ⁶	Not Applicable
Michigan	Yes	Not Applicable
Minnesota	Yes	Not Applicable
Mississippi ⁷	Yes	Not Applicable
Missouri	Yes	Not Applicable
Montana	Yes	Not Applicable
Nebraska	Yes	Not Applicable
New Hampshire	Yes	Not Applicable
New Jersey	Yes	Not Applicable
New Mexico	Yes	Not Applicable
New York City	Yes	Not Applicable
North Carolina	Yes	Not Applicable
North Dakota	Yes	Not Applicable
Oklahoma	No Response	No Response
Oregon	Yes ⁸	Not Applicable
Pennsylvania	Yes	Not Applicable
Rhode Island	Yes	Not Applicable
Tennessee	Yes	Not Applicable
Texas	Yes	Not Applicable
Utah	Yes	Not Applicable
Vermont	Yes	Not Applicable
Virginia	Yes ⁹	Not Applicable
West Virginia	Yes	Not Applicable
Wisconsin	Yes	Not Applicable

⁶ MA: Unless the lease, rental or license of the property is treated for corporate excise purposes as a sale, exchange or other disposition of a capital asset used in the taxpayer's trade or business.

⁷ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.09(3)(f) of the Mississippi Administrative Code.

⁸ OR: See subsection (5)(b)(A) of OAR 150-314.665(4).

⁹ VA: See Va. Code §58.1-416; 23 VAC 10-120-230.

Sourcing Receipts: Services (Part 1 of 4)

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Other ⁵	If other, please explain
Alabama ⁶	No	No	No Response ⁷	No Response ⁸	
Alaska	Yes	No	No	No	
Arizona	Yes	No	No ⁹	No	
Arkansas	No	No	No	No	
California ¹⁰	Yes ¹¹	No ¹²	Yes ¹³	No	
Colorado ¹⁴	No	Yes	No	No	
Connecticut	No	No	Yes¹⁵	No	
Delaware ¹⁶	No	Yes	No	No	
District of Columbia	No	No	No ¹⁷	No	

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² All of the service receipts are added to the numerator of the service company's sales factor if more income-producing activity based on cost of performance is performed in your state than any other state (plurality method).

³ A proportionate share of the service company's income is apportioned to the state on a *pro rata* basis, in which the company's sales are divided among the states in which it does business, depending on the performance level in each state as measured by costs of performance (proportionate method).

⁴ A market-based sourcing approach is used in which sales receipts are sourced based upon where the benefit was received to determine the location of the market (market-based sourcing).

⁵ Receipts from the provision of services are added to the numerator of the company's sales factor using a method other than costs of performance or market-based sourcing.

⁶ AL: Market based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the "benefit" rule. See Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

⁷ AL: Market Based Sourcing/delivery location.

⁸ AL: Market Based Sourcing/exception Section 18.

⁹ AZ: See ARS 43-1147. Market based sourcing is allowed for certain multi-state service providers, please see ARS 43-1147 for more information.

¹⁰ CA: Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (See 18 CCR §25136(b)(1).) 18 CCR §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

¹¹ CA: For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if: (1) The income-producing activity is performed in this state; or (2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance. For taxable years beginning on or after January 1, 2011: (1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state. (2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state. (3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state. (4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CO: Colorado doesn't use market based sourcing for services. Colorado sources services based on proportional cost of performance.

¹⁵ CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from services using market-based sourcing. "Gross receipts from services are assignable to this state if the market for services is in this state. The taxpayer's market for the services is in this state if and to the extent the service is used at a location in this state." See Conn. Gen. Stat. §12-218(b)(2).

¹⁶ DE: Delaware is not a market based sourcing state.

¹⁷ DC: Response is yes if the service is delivered to a customer in the district.

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Other ⁵	If other, please explain
Florida ¹⁸	No Response	No Response	Yes	No	
Georgia	No	No	Yes	No	
Hawaii ¹⁹	Yes ²⁰	Yes ²¹	No	No ²²	
Idaho	Yes ²³	No	No	No	
Illinois ²⁴	No	No	Yes	No	
Indiana ²⁵	Yes	No	No	No	
Iowa	No	No	Yes ²⁶	No	
Kansas	Yes	No	No	No	
Kentucky	Yes ²⁷	No	No	No	
Louisiana	Yes ²⁸	No ²⁹	No ³⁰	No	
Maine	No	No	Yes	No	
Maryland	No ³¹	No	Yes	No	
Massachusetts ³²	No	No	No	No	
Michigan	No	No	Yes	No	
Minnesota	No	No	Yes	No	
Mississippi	No	No	Yes	No	
Missouri	Yes	No	No	No	
Montana	Yes	No	No	No	
Nebraska	No	No	No ³³	No	
New Hampshire	Yes	No	No	No	
New Jersey	No	Yes ³⁴	No	No	
New Mexico	Yes	No	No	No	

¹⁸ FL: For personal services, see Rule 12C-1.0155(2)(e), F.A.C.

¹⁹ HI: Note: Does not include income or other attributes of a foreign affiliate. See section 18-235-38.5-02, HAR.

²⁰ HI: See section 18-235-37-01(d)(3), Hawaii Administrative Rules.

²¹ HI: *Id.*

²² HI: *Id.*

²³ ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. See IDAPA 35.01.01.550.

²⁴ IL: See IITA Section 304(a)(3)(C-5)(iv).

²⁵ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

²⁶ IA: Iowa sources services based on where the benefit of the service is received. This is set forth in Iowa Administrative Rule 701-54.6.

²⁷ KY: If only a small amount of service is performed in another state, all service receipts are added to the numerator.

²⁸ LA: Louisiana is not a UDITPA state. Sourcing of services depends on the nature of the service. The answer given is for general services not covered by the provisions of La. R.S. 47:287.92-.95.

²⁹ LA: *Id.*

³⁰ LA: *Id.*

³¹ MD: Sale of service is sourced to MD if the individual is domiciled in MD.

³² MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. See 830 CMR 63.38.1(9)(d)(4)(a).

³³ NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. See Neb. Rev. Stat. §77-2734.14(3).

³⁴ NJ: See N.J.A.C. 18:7-8.10.

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Other ⁵	If other, please explain
New York City ³⁵	No	No Response	No Response	No Response	
North Carolina ³⁶	No	No	No	Yes	N.C. Gen. Stat. 105-130.4(l)(3)(c) requires that the receipts from services be sourced to the location of the income-producing activities.
North Dakota	Yes ³⁷	Yes ³⁸	No	No	
Oklahoma ³⁹	No Response	No Response	No Response	No Response	
Oregon	Yes	No	No	No	
Pennsylvania ⁴⁰	No	No	Yes ⁴¹	Yes	
Rhode Island	No	No	Yes	No	
Tennessee	Yes ⁴²	No ⁴³	No ⁴⁴	No	
Texas	No	No	No	Yes	Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. See Franchise Tax Rule 3.591(e)(26).
Utah ⁴⁵	No	No	Yes	No	

³⁵ NYC: Note that, in general, the sourcing of service receipts is based on where the benefit is received under the business corporation tax, and place of performance under the general corporation tax and unincorporated business tax.

³⁶ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income-producing activity) is performed. See N.C. Gen. Stat. 105-130.4(l)(3)(c).

³⁷ ND: Assuming the records exist to document the direct cost of each specific income producing activity.

³⁸ ND: The proportionate method may be used if the direct costs for each transaction are not maintained or cannot be shown. The administrative rule (N.D.A.C. Section 81-03-09-31(4)) potentially provides for either, depending on the nature of the income-producing activity.

³⁹ OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means: (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "billing address" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

⁴⁰ PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.

⁴¹ PA: Receipts are sourced based upon where the service is delivered.

⁴² TN: Tennessee takes the UDITPA approach with regard to apportionment of receipts from sales other than sales of tangible personal property. See Tenn. Code Ann. §67-4-2012(i).

⁴³ TN: *Id.*

⁴⁴ TN: *Id.*

⁴⁵ UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: "Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

State ¹	Cost of performance (plurality) ²	Cost of performance (proportionate) ³	Market-based ⁴	Other ⁵	If other, please explain
Vermont	No	No	No	Yes	Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.
Virginia	Yes ⁴⁶	No ⁴⁷	No	No	
West Virginia	Yes	No	No	No	
Wisconsin	No	No	Yes ⁴⁸	No	

⁴⁶ VA: See Va. Code §58.1-416; 23 VAC 10-120-230.

⁴⁷ VA: The proportionate method is used by financial corporations only. See Va. Code §58.1-418(A); 23 VAC 10-120-250(A).

⁴⁸ WI: Section 71.25(9)(dh)2.b., Wis. Stats. (2015-16), provides that the benefit of a service is received in Wisconsin if the service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

Sourcing Receipts: Services (Part 2 of 4)

State ¹	Services performed in more than one state by agent or independent contractor and:						
	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
Alabama ⁹	Yes	Yes	Yes	Yes	Yes	Yes	Depends
Alaska	Yes	No Response ¹⁰	No	No	No	No	No
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Depends	Yes	Yes	Yes	Depends	Depends

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed wholly in your state?

³ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed both in your state and outside your state?

⁴ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed wholly in your state by an agent or independent contractor on the company's behalf?

⁵ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contract with the contractor/agent indicates that the service will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service?

⁶ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contract with the contractor/agent indicates where the service will be performed, but the company's contract with the customer indicates that the services will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service?

⁷ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed in more than one state by an agent or independent contractor on the corporation's behalf and the company's contracts with the contractor/agent and the customer do not indicate where the service will be performed or the portion of the company's payment to the contractor/agent associated with the service, but the customer is domiciled in your state?

⁸ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are performed by an agent or independent contractor on the company's behalf, and the location where the service will be performed by the agent/contractor, the portion of the company's payment to the contractor/agent associated with the service and the customer's domicile cannot be determined?

⁹ AL: Market based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the "benefit" rule. See Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

¹⁰ AK: Alaska has no position at this time.

Services performed in more than one state by agent or independent contractor and:

State ¹	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates where service is performed but contract with customer indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
California ¹¹	No	No	No	No	No	Depends	No
Colorado ¹²	Yes	Yes ¹³	Yes	Depends	Depends	Depends	Depends
Connecticut	No	No	No	No	No	No	No
Delaware ¹⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹⁵	Yes	Depends ¹⁶	Yes	Depends ¹⁷	Depends ¹⁸	Depends ¹⁹	Depends ²⁰
Georgia ²¹	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Hawaii ²²	Yes	Yes	No	No	No	No	No
Idaho	Yes	No Response ²³	Yes ²⁴	No Response ²⁵	No Response ²⁶	No Response ²⁷	No Response ²⁸
Illinois ²⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana ³⁰	Yes	Yes	No	No	No	No	No

¹¹ CA: Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (See 18 CCR §25136(b)(1).) 18 CCR §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

¹² CO: **CO: Colo doesn't use market based sourcing for services. Colo sources services based on proportional cost of performance.**

¹³ CO: Pro rata.

¹⁴ DE: Delaware is not a market based sourcing State.

¹⁵ FL: For personal services, see Rule 12C-1.0155(2)(e), F.A.C.

¹⁶ FL: Generally, depends on the facts and circumstances and the income producing activity.

¹⁷ FL: *Id.*

¹⁸ FL: *Id.*

¹⁹ FL: *Id.*

²⁰ FL: *Id.*

²¹ GA: Depends on where the benefit of the service is received.

²² HI: See Section 18-235-37-01, Hawaii Administrative Rules (HAR). Note: Does not include income or other attributes of a foreign affiliate. See section 18-235-38.5-02, HAR.

²³ ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. See IDAPA 35.01.01.550.

²⁴ ID: *Id.*

²⁵ ID: *Id.*

²⁶ ID: *Id.*

²⁷ ID: *Id.*

²⁸ ID: *Id.*

²⁹ IL: Not enough information. Sales of services are sourced to the state the service is received. See IITA Section 304(a)(3)(C-5)(iv).

³⁰ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

State ¹	Services performed in more than one state by agent or independent contractor and:						
	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates where service is performed but contract with customer indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
Iowa	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	Yes	Yes ³¹	No	No	No	No	No
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Depends	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes ³²	Yes ³³	Yes ³⁴	Yes ³⁵	Yes ³⁶	Yes ³⁷
Massachusetts ³⁸	Yes	Depends	Yes	Depends	Depends	Depends	Depends
Michigan	No Response ³⁹	No Response ⁴⁰	No Response ⁴¹	No Response ⁴²	No Response ⁴³	No Response ⁴⁴	No Response ⁴⁵
Minnesota ⁴⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	Yes

³¹ KS: The reply of "yes" is based on the presumption that the greater cost of performance of the revenue producing transaction occurs within Kansas.

³² MD: If the receipts are derived from customers within MD as determined in §D of COMAR 03.04.03.08.

³³ MD: *Id.*

³⁴ MD: *Id.*

³⁵ MD: *Id.*

³⁶ MD: *Id.*

³⁷ MD: *Id.*

³⁸ MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. See 830 CMR 63.38.1(9)(d)(4)(a).

³⁹ MI: Michigan statute requires that sales may be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. See MCL 206.665 and RAB 2015-20.

⁴⁰ MI: *Id.*

⁴¹ MI: *Id.*

⁴² MI: *Id.*

⁴³ MI: *Id.*

⁴⁴ MI: Sales of services are sourced based on where the benefit to the recipient is received. Sales of brokerage services to, or on behalf of, regulated investment companies and some types of media receipts may be sourced based on the domicile of the customer. See MCL 206.665(2)(c) and (20) and RAB 2015-20.

⁴⁵ MI: Michigan statute requires that sales may be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. See MCL 206.665 and RAB 2015-20.

⁴⁶ MN: Minn. Stat. Section 290.191, subd. 5(j) provides that receipts from performance of services must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.

State ¹	Services performed in more than one state by agent or independent contractor and:						
	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates where service is performed but contract with customer indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
Missouri	Yes	Yes ⁴⁷	Yes	Yes ⁴⁸	Yes ⁴⁹	Yes ⁵⁰	Yes ⁵¹
Montana	Yes	Depends	Yes	Depends	Depends	Depends	Depends
Nebraska ⁵²	Depends	Depends	Depends	Depends	Depends	Depends	Depends
New Hampshire	Yes	Depends	Yes	Depends	Depends	Depends	Depends
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico ⁵³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New York City⁵⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	No ⁵⁵
North Dakota	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ⁵⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	Yes	Yes	Yes	Yes	No

⁴⁷ MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.

⁴⁸ MO: *Id.*

⁴⁹ MO: *Id.*

⁵⁰ MO: *Id.*

⁵¹ MO: *Id.*

⁵² NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. See Neb. Rev. Stat. §77-2734.14(3).

⁵³ NM: The state cannot provide a definitive position on these issues at this time.

⁵⁴ **NYC: Note that, in general, the sourcing of service receipts is based on where the benefit is received under the business corporation tax, and place of performance under the general corporation tax and unincorporated business tax.**

⁵⁵ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income producing activity) is performed. See N.C. Gen. Stat. 105-130.4(l)(3)(c).

⁵⁶ OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means: (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "billing address" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

State ¹	Services performed in more than one state by agent or independent contractor and:						
	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates where service is performed but contract with customer indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
Pennsylvania ⁵⁷	Yes	Yes	Yes	Yes	Yes	Yes ⁵⁸	Yes ⁵⁹
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes ⁶⁰	Yes	No	No	No	No
Texas	Yes	No Response ⁶¹	Yes	No Response ⁶²	No Response ⁶³	No Response ⁶⁴	No Response ⁶⁵
Utah ⁶⁶	Yes	Depends	Yes	Yes	Yes	Yes	Yes
Vermont	Yes	Depends	Yes	Yes	Yes	Depends	No Response

⁵⁷ PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.

⁵⁸ PA: Yes, if delivered to PA.

⁵⁹ PA: *Id.*

⁶⁰ TN: Plurality Cost of Performance.

⁶¹ TX: Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. See Rule 3.591(e)(26).

⁶² TX: *Id.*

⁶³ TX: *Id.*

⁶⁴ TX: *Id.*

⁶⁵ TX: *Id.*

⁶⁶ UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: "Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

Services performed in more than one state by agent or independent contractor and:

State ¹	Services performed wholly in-state ²	Services performed both in and out-of-state ³	Services performed in-state by agent or independent contractor ⁴	Contract with the contractor/agent indicates services are in-state and determines payment ⁵	Contract with the contractor/agent indicates where service is performed but contract with customer indicates services are in-state and determines payment ⁶	Contracts with the contractor/agent and with the customer do not indicate where service will be performed or payment, but customer is domiciled in-state ⁷	Location of services, payment, and customer's domicile is unknown ⁸
Virginia	Yes ⁶⁷	Yes ⁶⁸	No ⁶⁹	No ⁷⁰	No ⁷¹	No ⁷²	No ⁷³
West Virginia	Yes	Yes ⁷⁴	No ⁷⁵	No	No	No	No
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes	Yes

⁶⁷ VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. The rendering of personal services by employees or the utilization of tangible or intangible property by the taxpayer in performing a service. Sales, other than sales of tangible personal property, are in the Commonwealth if: 1. The income-producing activity is performed in the Commonwealth; or 2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance. See VA. Code 58.1-416 and 23 VAC 10-120-230.

⁶⁸ VA: *Id.*

⁶⁹ VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. See 23 VAC 10-120-230.

⁷⁰ VA: *Id.*

⁷¹ VA: *Id.*

⁷² VA: *Id.*

⁷³ VA: *Id.*

⁷⁴ WV: See 110 CSR 24-7.7.1.4. Gross receipts for the performance of personal services are attributable to this State to the extent the services are performed in this State

⁷⁵ WV: See 110 CSR 24-7.7.j. The term “income-producing activity” . . . means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor.

Sourcing Receipts: Services (Part 3 of 4)

State ¹	Direct personal services performed wholly in-state ²	Direct personal services performed in and out-of-state ³	Direct personal services received by in-state individual ⁴	Services received by individual with in-state billing address ⁵	Services received by individual with out-of-state billing address ⁶
Alabama ⁷	Yes	Depends	Yes	Yes	No
Alaska	Yes	Yes	Yes	No Response ⁸	No Response ⁹
Arizona	Yes	Yes	Yes	Yes	No
Arkansas	Yes	Yes	Depends	Depends	Depends
California ¹⁰	No	No	Yes	Yes	Yes
Colorado ¹¹	Yes	Yes	No Response	No Response	No Response
Connecticut ¹²	No Response	No Response	No Response	No Response	No Response
Delaware ¹³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida ¹⁴	Yes	Depends ¹⁵	Depends ¹⁶	Depends ¹⁷	Depends ¹⁸

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from the provision of services added to the numerator of the corporation's sales factor when direct personal services are performed wholly in your state?

³ Are receipts from the provision of services added to the numerator of the corporation's sales factor when direct personal services are performed both in your state and outside your state?

⁴ Are receipts from the provision of services added to the numerator of the corporation's sales factor when direct personal services are received by an individual in the state?

⁵ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services, other than direct personal services, are received by an individual with an in-state billing address?

⁶ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services, other than direct personal services, are received by an individual with an out-of-state billing address?

⁷ AL: Market based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the "benefit" rule. See Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

⁸ AK: Alaska has no position at this time.

⁹ AK: *Id.*

¹⁰ CA: Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (See 18 CCR §25136(b)(1).) 18 CCR §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

¹¹ CO: **Colorado doesn't use market based sourcing for services. Colorado sources services based on proportional cost of performance.**

¹² CT: **Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from services using market-based sourcing. "Gross receipts from services are assignable to this state if the market for services is in this state. The taxpayer's market for the services is in this state if and to the extent the service is used at a location in this state." See Conn. Gen. Stat. §12-218(b)(2). The Connecticut Department of Revenue Service is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

¹³ DE: Delaware is not a market based sourcing State.

¹⁴ FL: For personal services, see Rule 12C-1.0155(2)(e), F.A.C.

¹⁵ FL: Generally, depends on the facts and circumstances and the income producing activity.

¹⁶ FL: *Id.*

¹⁷ FL: *Id.*

¹⁸ FL: *Id.*

State ¹	Direct personal services performed wholly in-state ²	Direct personal services performed in and out-of-state ³	Direct personal services received by in-state individual ⁴	Services received by individual with in-state billing address ⁵	Services received by individual with out-of-state billing address ⁶
Georgia	Depends ¹⁹	Depends ²⁰	Yes	Depends ²¹	Depends ²²
Hawaii ²³	Yes ²⁴	Yes ²⁵	Not Applicable ²⁶	Not Applicable ²⁷	Not Applicable ²⁸
Idaho ²⁹	Yes	No Response	Not Applicable	Not Applicable	Not Applicable
Illinois ³⁰	No Response ³¹	No Response ³²	Yes	Yes	Yes ³³
Indiana ³⁴	Yes	Yes	Not Applicable	Not Applicable	Not Applicable
Iowa	Not Applicable	Not Applicable	Yes	Yes	Yes ³⁵
Kansas	Yes	Yes ³⁶	Yes ³⁷	Yes ³⁸	Yes ³⁹
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Yes	Yes	Not Applicable	Not Applicable	Not Applicable
Maine	Yes	Yes	Yes	Yes	No
Maryland	Yes ⁴⁰	Yes ⁴¹	Yes	No	No
Massachusetts ⁴²	Yes	Depends	Yes	Yes	Depends

¹⁹ GA: Depends on where the benefit of the service is received.

²⁰ GA: *Id.*

²¹ GA: *Id.*

²² GA: *Id.*

²³ HI: Note: Does not include income or other attributes of a foreign affiliate. See section 18-235-38.5-02, HAR.

²⁴ HI: See IITA Section 18-235-37-01, Hawaii Administrative Rules (HAR).

²⁵ HI: *Id.*

²⁶ HI: Not applicable since sourcing of income is based on place of where services are performed. See section 18-235-4-08(c), HAR.

²⁷ HI: *Id.*

²⁸ HI: *Id.*

²⁹ ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. See IDAPA 35.01.01.550.

³⁰ IL: See IITA Section 304(a)(3)(C-5)(iv).

³¹ IL: Not enough information. Sales of services are sourced to the state the service is received.

³² IL: *Id.*

³³ IL: If the services are received in this State.

³⁴ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

³⁵ IA: As long as the services were received in Iowa. A portion of the income from these services will be included in the numerator of the apportionment factor. The billing address would be irrelevant if it can be determined that some benefit of the services was in Iowa. If it cannot be definitively determined where the benefit of the service was received, then billing addresses may be used.

³⁶ KS: The reply of "yes" is based on the presumption that the greater cost of performance of the revenue producing transaction occurs within Kansas.

³⁷ KS: *Id.*

³⁸ KS: *Id.*

³⁹ KS: *Id.*

⁴⁰ MD: If the receipts are derived from customers within MD as determined in §D of COMAR 03.04.03.08.

⁴¹ MD: *Id.*

⁴² MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. See 830 CMR 63.38.1(9)(d)(4)(a).

State ¹	Direct personal services performed wholly in-state ²	Direct personal services performed in and out-of-state ³	Direct personal services received by in-state individual ⁴	Services received by individual with in-state billing address ⁵	Services received by individual with out-of-state billing address ⁶
Michigan	No Response ⁴³	No Response ⁴⁴	Yes	Yes ⁴⁵	No ⁴⁶
Minnesota	No Response ⁴⁷	No Response ⁴⁸	Yes	Yes	No Response ⁴⁹
Mississippi	Yes	Yes	Yes	Yes	No
Missouri ⁵⁰	Yes	Yes	Yes	Yes	Yes
Montana	Yes	Depends	Not Applicable	Not Applicable	Not Applicable
Nebraska	Depends ⁵¹	Depends ⁵²	Yes	Depends ⁵³	Depends ⁵⁴
New Hampshire	Yes	Depends	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes ⁵⁵	Yes ⁵⁶	Yes ⁵⁷
New Mexico	No Response ⁵⁸	No Response ⁵⁹	Not Applicable	Yes	Not Applicable
New York City⁶⁰	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes	Yes ⁶¹	Yes	No ⁶²	No
North Dakota	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

⁴³ MI: Michigan statute requires that sales be included in the numerator based on where the benefit to the recipient is received (market-based), not based on where the service was performed. See MCL 206.665 and RAB 2015-20.

⁴⁴ MI: *Id.*

⁴⁵ MI: Certain loan receipts may be sourced to Michigan if the borrower's billing address is in Michigan. See MCL 206.665(3), (4), (5), (9) and (22). For other services, if it cannot be determined where the benefit to the customer is received, services are sourced to the state reflected in the billing address. See MCL 206.669.

⁴⁶ MI: *Id.*

⁴⁷ MN: Minn. Stat. Section 290.191, subd. 5(j) provides that receipts from performance of services must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.

⁴⁸ MN: *Id.*

⁴⁹ MN: *Id.*

⁵⁰ MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.

⁵¹ NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. See Neb. Rev. Stat. §77-2734.14(3).

⁵² NE: *Id.*

⁵³ NE: *Id.*

⁵⁴ NE: *Id.*

⁵⁵ NJ: Determinations will be made on a case by case basis.

⁵⁶ NJ: *Id.*

⁵⁷ NJ: *Id.*

⁵⁸ NM: The state cannot provide a definitive position on these issues at this time.

⁵⁹ NM: *Id.*

⁶⁰ **NYC: Note that, in general, the sourcing of service receipts is based on where the benefit is received under the business corporation tax, and place of performance under the general corporation tax and unincorporated business tax.**

⁶¹ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income producing activity) is performed. See N.C. Gen. Stat. 105-130.4(I)(3)(c).

⁶² NC: *Id.*

State ¹	Direct personal services performed wholly in-state ²	Direct personal services performed in and out-of-state ³	Direct personal services received by in-state individual ⁴	Services received by individual with in-state billing address ⁵	Services received by individual with out-of-state billing address ⁶
Oklahoma ⁶³	No Response	No Response	No Response ⁶⁴	No Response ⁶⁵	No Response ⁶⁶
Oregon	Yes	No	Not Applicable	Not Applicable	Not Applicable
Pennsylvania ⁶⁷	Yes	Yes	Yes	Yes ⁶⁸	Yes ⁶⁹
Rhode Island	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes ⁷⁰	Not Applicable ⁷¹	Not Applicable ⁷²	Not Applicable ⁷³
Texas	Yes	No Response ⁷⁴	No Response ⁷⁵	No Response ⁷⁶	No Response ⁷⁷
Utah ⁷⁸	Yes	Depends	Yes	Yes	No ⁷⁹
Vermont	Yes	Depends	Depends	Depends	Depends

⁶³ OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state’s marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means: (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A “billing address” means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer’s account is mailed.

⁶⁴ OK: Policy not yet developed.

⁶⁵ OK: *Id.*

⁶⁶ OK: *Id.*

⁶⁷ PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer’s billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer’s billing address.

⁶⁸ PA: Receipts are sourced based upon where the service is delivered.

⁶⁹ PA: *Id.*

⁷⁰ TN: Plurality Cost of Performance.

⁷¹ TN: This question deals with factors that are not relevant to Tennessee’s determination.

⁷² TN: *Id.*

⁷³ TN: *Id.*

⁷⁴ TX: Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. See Rule 3.591(e)(26).

⁷⁵ TX: *Id.*

⁷⁶ TX: *Id.*

⁷⁷ TX: *Id.*

⁷⁸ UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: “Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).”

⁷⁹ UT: Generally, No.

State¹	Direct personal services performed wholly in-state²	Direct personal services performed in and out-of-state³	Direct personal services received by in-state individual⁴	Services received by individual with in-state billing address⁵	Services received by individual with out-of-state billing address⁶
Virginia	Yes ⁸⁰	Yes ⁸¹	Not Applicable ⁸²	Not Applicable ⁸³	Not Applicable ⁸⁴
West Virginia	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes ⁸⁵

⁸⁰ VA: The act or acts directly engaged in by the taxpayer for the ultimate purpose of producing the sale to be apportioned by this section. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. The rendering of personal services by employees or the utilization of tangible or intangible property by the taxpayer in performing a service. Sales, other than sales of tangible personal property, are in the Commonwealth if: 1. The income-producing activity is performed in the Commonwealth; or 2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance. See VA. Code 58.1-416 and 23 VAC 10-120-230.

⁸¹ VA: *Id.*

⁸² VA: Because Virginia uses the costs-of-performance method of sourcing sales from services, it is not relevant where the services are received.

⁸³ VA: *Id.*

⁸⁴ VA: *Id.*

⁸⁵ WI: The benefit of a service is received in this state if the service is provided to an individual who is physically present in this state at the time the service is received.

Sourcing Receipts: Services (Part 4 of 4)

State ¹	Services w/ substantial connection to geographic location received by business ²	Services w/ substantial connection to geographic location both in and out-of-state received by business ³	Services w/ no substantial connection to geographic location received by business ⁴	Services received by business and service company's contract indicates benefit received in state ⁵	Services received by business and service company's contract indicates benefit received in and out-of-state ⁶	Services received by business and order placed from in-state location ⁷	Services received by business with in-state billing address ⁸
Alabama ⁹	Yes	Yes	Yes	Depends	Depends	Depends	Depends
Alaska ¹⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Depends	Depends	Depends	Depends	Depends	Depends	Depends
California ¹¹	Yes	No	Yes	Yes	Depends	Yes	Yes
Colorado ¹²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Connecticut ¹³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware ¹⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	Yes	Yes	No	No	No	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from the provision of services added to the numerator of the corporation's sales factor when services with a substantial connection to a geographic location in your state are received by a business entity?

³ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services with a substantial connection to a geographic location both in your state and outside your state are received by a business entity?

⁴ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services with no substantial connection to a geographic location are received by a business entity and the business entity is commercially domiciled in your state?

⁵ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are received by a business entity and the service company's contract with the customer or the service company's books and records kept in the normal course of business indicate that the benefit of the service is received in your state?

⁶ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are received by a business entity and the service company's contract with the customer or the service company's books and records kept in the normal course of business indicate that the benefit of the service is received both in your state and outside your state?

⁷ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are received by a business entity and the business entity placed the order for the service from a location in your state?

⁸ Are receipts from the provision of services added to the numerator of the corporation's sales factor when services are received by a business entity and the business has an in-state billing address?

⁹ AL: Market based sourcing is effective for all taxable years beginning on or after 12/31/10. Alabama's market based sourcing statute is not based on sourcing of receipts based on the "benefit" rule. See Alabama Income Tax Regulation 810-27-1-4-.17 for specific sourcing rules.

¹⁰ AK: Alaska has no position at this time.

¹¹ CA: Sales of services are assigned to California to the extent the purchaser received the benefit of the service in the state. (See 18 CCR §25136(b)(1).) 18 CCR §25136-2(c)(2) provides a set of cascading rules on how to assign market-based sales where a corporation or other business entity is the taxpayer's customer.

¹² CO: Colorado doesn't use market based sourcing for services. Colorado sources services based on proportional cost of performance.

¹³ CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from services using market-based sourcing. "Gross receipts from services are assignable to this state if the market for services is in this state. The taxpayer's market for the services is in this state if and to the extent the service is used at a location in this state." See Conn. Gen. Stat. §12-218(b)(2). The Connecticut Department of Revenue Service is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.

¹⁴ DE: Delaware is not a market based sourcing State.

State ¹	Services w/ substantial connection to geographic location received by business ²	Services w/ substantial connection to geographic location both in and out-of-state received by business ³	Services w/ no substantial connection to geographic location received by business ⁴	Services received by business and service company's contract indicates benefit received in state ⁵	Services received by business and service company's contract indicates benefit received in and out-of-state ⁶	Services received by business and order placed from in-state location ⁷	Services received by business with in-state billing address ⁸
Florida ¹⁵	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Georgia	Yes	Yes	Depends ¹⁶	Yes	Yes	No	Depends ¹⁷
Hawaii ¹⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Idaho ¹⁹	Not Applicable	No Response	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Illinois ²⁰	Yes ²¹	Yes	Yes	Yes	Yes	Yes	Yes
Indiana ²²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable
Iowa	Yes	Yes	Yes	Yes	Yes ²³	Yes ²⁴	Yes ²⁵
Kansas	Yes ²⁶	Yes ²⁷	Yes ²⁸	Yes ²⁹	Yes ³⁰	No	No
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Not Applicable	Yes	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	Yes	Depends	Yes	Yes	Depends	Yes	Yes
Maryland	Yes ³¹	Yes ³²	Yes ³³	No	Yes ³⁴	Yes	No

¹⁵ FL: Generally, depends on the facts and circumstances and the income producing activity. For personal services, see Rule 12C-1.0155(2)(e), F.A.C.

¹⁶ GA: Depends on where the benefit of the service is received.

¹⁷ GA: *Id.*

¹⁸ HI: Not applicable since sourcing of income is based on place of where services are performed. See section 18-235-4-08(c), HAR. Note: Does not include income or other attributes of a foreign affiliate. See section 18-235-38.5-02, HAR.

¹⁹ ID: Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho, or if the greater part of the income producing activity is performed in Idaho, based on costs of performance when the income producing activity is performed within and without Idaho. See IDAPA 35.01.01.550.

²⁰ IL: See IITA Section 304(a)(3)(C-5)(iv).

²¹ IL: If the services are received in this State.

²² IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

²³ IA: As long as the services were received in Iowa. A portion of the income from these services will be included in the numerator of the apportionment factor. The billing address would be irrelevant if it can be determined that some benefit of the services was in Iowa. If it cannot be definitively determined where the benefit of the service was received, then billing addresses may be used.

²⁴ IA: *Id.*

²⁵ IA: *Id.*

²⁶ KS: The reply of "yes" is based on the presumption that the greater cost of performance of the revenue producing transaction occurs within Kansas.

²⁷ KS: *Id.*

²⁸ KS: *Id.*

²⁹ KS: *Id.*

³⁰ KS: *Id.*

³¹ MD: Domicile for a business entity is the state in which is located the office or place of business that provides the principal impetus for the sale. If no principal impetus, then domicile is the state where headquarters or principal place of business management is located. (See COMAR 03.04.03.08D(b).)

³² MD: If MD is the principle impetus for the sale pursuant to §D(b) of COMAR 03.04.03.08.

³³ MD: Domicile for a business entity is the state in which is located the office or place of business that provides the principal impetus for the sale. If no principal impetus, then domicile is the state where headquarters or principal place of business management is located. (See COMAR 03.04.03.08D(b).)

³⁴ MD: If MD is the principle impetus for the sale pursuant to §D(b) of COMAR 03.04.03.08.

State ¹	Services w/ substantial connection to geographic location received by business ²	Services w/ substantial connection to geographic location both in and out-of-state received by business ³	Services w/ no substantial connection to geographic location received by business ⁴	Services received by business and service company's contract indicates benefit received in state ⁵	Services received by business and service company's contract indicates benefit received in and out-of-state ⁶	Services received by business and order placed from in-state location ⁷	Services received by business with in-state billing address ⁸
Massachusetts ³⁵	Depends	Depends	Depends	Yes	Depends	Depends	Depends
Michigan	Yes ³⁶	Yes ³⁷	Yes ³⁸	Yes	No Response ³⁹	No	Yes ⁴⁰
Minnesota	Yes	No Response ⁴¹	Yes	Yes	No Response ⁴²	No Response ⁴³	No Response ⁴⁴
Mississippi	Yes	Yes	Yes	Yes	Yes	No	Yes
Missouri ⁴⁵	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Not Applicable	Depends	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Nebraska	Depends ⁴⁶	Depends ⁴⁷	Depends ⁴⁸	No	No	Depends ⁴⁹	Depends ⁵⁰
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey ⁵¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Mexico	Not Applicable	No Response ⁵²	Not Applicable	Not Applicable	No Response ⁵³	Not Applicable	Not Applicable
New York City⁵⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response

³⁵ MA: Generally, the sale of a service is in Massachusetts if and to the extent that the service is delivered at a location in Massachusetts. See 830 CMR 63.38.1(9)(d)(4)(a).

³⁶ MI: Sales of services are sourced based on where the benefit to the recipient is received. If the service relates to real property located in Michigan, sales are included in the numerator to the extent that the real property is located in Michigan.

³⁷ MI: *Id.*

³⁸ MI: Sales of services are sourced based on where the benefit to the recipient is received. Sales of brokerage services to, or on behalf of, regulated investment companies and some types of media receipts may be sourced based on the domicile of the customer. See MCL 206.665(2)(c) and (20) and RAB 2015-20. If the service is provided to a purchaser that is engaged in a trade or business in Michigan and the service relates to the trade or business in Michigan, sales are included in the numerator to the extent that the service relates to the trade or business of the purchaser in Michigan.

³⁹ MI: Sales are included in proportion to the extent that the recipient receives benefit of services in Michigan. See MCL 206.665(2) and RAB 2015-20.

⁴⁰ MI: Certain loan receipts may be sourced to Michigan if the borrower's billing address is in Michigan. See MCL 206.665(3), (4), (5), (9) and (22). For other services, if it cannot be determined where the benefit to the customer is received, services are sourced to the state reflected in the billing address. See MCL 206.669.

⁴¹ MN: Minn. Stat. Section 290.191, subd. 5(j) provides that receipts from performance of services must be attributed to the state where the services are received. If the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed.

⁴² MN: *Id.*

⁴³ MN: *Id.*

⁴⁴ MN: *Id.*

⁴⁵ MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.

⁴⁶ NE: Nebraska's market-based sourcing rules contain different treatment and hierarchy of sourcing for services. See Neb. Rev. Stat. §77-2734.14(3).

⁴⁷ NE: *Id.*

⁴⁸ NE: *Id.*

⁴⁹ NE: *Id.*

⁵⁰ NE: *Id.*

⁵¹ NJ: Determinations will be made on a case by case basis.

⁵² NM: The state cannot provide a definitive position on these issues at this time.

⁵³ NM: *Id.*

⁵⁴ NYC: Note that, in general, the sourcing of service receipts is based on where the benefit is received under the business corporation tax, and place of performance under the general corporation tax and unincorporated business tax.

State ¹	Services w/ substantial connection to geographic location received by business ²	Services w/ substantial connection to geographic location both in and out-of-state received by business ³	Services w/ no substantial connection to geographic location received by business ⁴	Services received by business and service company's contract indicates benefit received in state ⁵	Services received by business and service company's contract indicates benefit received in and out-of-state ⁶	Services received by business and order placed from in-state location ⁷	Services received by business with in-state billing address ⁸
North Carolina	Yes	Yes	No	No ⁵⁵	No ⁵⁶	No ⁵⁷	No ⁵⁸
North Dakota	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ⁵⁹	No Response ⁶⁰	No Response	No Response	No Response	No Response	No Response ⁶¹	No Response ⁶²
Oregon	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania ⁶³	Yes	Yes	Yes	Yes ⁶⁴	Yes ⁶⁵	Yes ⁶⁶	Yes ⁶⁷
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Not Applicable ⁶⁸	Not Applicable	No	Not Applicable	Not Applicable	No	No
Texas ⁶⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Utah ⁷⁰	Yes	Depends	Yes	Yes	Depends	Yes	Yes
Vermont	Yes	Depends	No	Depends	Depends	Depends	Depends

⁵⁵ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income producing activity) is performed. See N.C. Gen. Stat. 105-130.4(I)(3)(c).

⁵⁶ NC: *Id.*

⁵⁷ NC: *Id.*

⁵⁸ NC: *Id.*

⁵⁹ OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means: (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "billing address" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

⁶⁰ OK: Policy not yet developed.

⁶¹ OK: *Id.*

⁶² OK: *Id.*

⁶³ PA: 2013 and prior tax years: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts. 2014 and later tax years: Sales of services are sourced to the state where the service is delivered. If the state where the service is delivered cannot be determined, and the customer is a natural person, the service is deemed delivered at the customer's billing address. If the state where the service is delivered cannot be determined and the customer is other than a natural person, the sale is sourced to the state from which the services were ordered; if the state from which the services were ordered cannot be determined, the sale is sourced to the state of the customer's billing address.

⁶⁴ PA: Receipts are sources based upon where the service is delivered.

⁶⁵ PA: *Id.*

⁶⁶ PA: *Id.*

⁶⁷ PA: *Id.*

⁶⁸ TN: This question deals with factors that are not relevant to Tennessee's determination.

⁶⁹ TX: Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. See Rule 3.591(e)(26).

⁷⁰ UT: Utah uses a market-based approach to apportion services wherein the receipt is sourced to Utah if the benefit of the service is received in Utah. Utah Administrative Rule R865-6F-8*(10)(g) provides additional guidance and some examples. The answers to the above questions could vary depending on where the benefit of the service is received or, if such is unclear, a hierarchy of priorities within the above rule provides guidelines indicating whether receipts from a particular service are properly sourced to Utah. UCA 59-7-319(4)(a) states: "Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c).

State¹	Services w/ substantial connection to geographic location received by business²	Services w/ substantial connection to geographic location both in and out-of-state received by business³	Services w/ no substantial connection to geographic location received by business⁴	Services received by business and service company's contract indicates benefit received in state⁵	Services received by business and service company's contract indicates benefit received in and out-of-state⁶	Services received by business and order placed from in-state location⁷	Services received by business with in-state billing address⁸
Virginia ⁷¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	Yes	No	Yes	Yes	No	No
Wisconsin	No ⁷²	Yes	No ⁷³	Yes	Yes	No	No

⁷¹ VA: Because Virginia uses the costs-of-performance method of sourcing sales from services, it is not relevant where the services are received.

⁷² WI: The benefit of a service is received in this state if the service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

⁷³ WI: *Id.*

Sourcing Receipts: Intangibles (Part 1 of 3)

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Alabama	No	Yes	No	
Alaska	Yes	No	No	
Arizona	Yes	No Response ⁵	No	
Arkansas	No	No	Yes	
California	No	Yes	No	
Colorado	No	No	Yes	Sales of intangibles sourced to Colorado if taxpayer's commercial domicile is in Colorado. See 39-22-303.5.4(C)(5). Receipts from patents and copyrights are sourced to Colorado if the intangibles are utilized in Colorado and if taxpayer is not taxable in another state where the intangibles are utilized and the taxpayer's commercial domicile is in Colorado. See 39-22-303.5.4(C)(4).
Connecticut	No	Yes	No	Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.
Delaware	No	Yes	No	The receipts shall be allocated proportionately to the states in which the product or process protected by the patent is manufactured or used or in which the publication protected by the copyright is produced or printed.
District of Columbia	No	Yes	No	
Florida	No	Yes	Yes	The income producing activity. See Rule 12C-1.0155(2)(f), F.A.C.
Georgia	No	Yes	No	
Hawaii	Yes	No	Yes	Business income is included if it can be readily identified and if income producing activity occurs in the state. If business income cannot be readily attributed to income producing activity of the taxpayer it's excluded.

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² An out-of-state corporation must source receipts from sales of intangible personal property to your state based on costs of performance.

³ An out-of-state corporation must source receipts from sales of intangible personal property to your state based on **the location of the market.**

⁴ An out-of-state corporation must source receipts from sales of intangible personal property to your state based on a method other than costs of performance or the market.

⁵ AZ: Market-based sourcing is allowed for certain multistate service providers, please see ARS 43-1147 for more information.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Idaho	Yes	No	Not Applicable	
Illinois ⁶	Yes ⁷	Yes ⁸	No	
Indiana ⁹	Yes	No	No	
Iowa ¹⁰	No	Yes	No	
Kansas ¹¹	Yes	No	No	
Kentucky	Yes	No	No	
Louisiana	No Response	No Response	No Response	
Maine	No	Yes ¹²	No	
Maryland ¹³	No	No	Yes	
Massachusetts	No	Yes ¹⁴	No	
Michigan	No	No	Yes	
Minnesota	No	Yes	No	
Mississippi	No	Yes	No	
Missouri	Yes	No	No	
Montana	Yes	No	No	
Nebraska	No	Yes	Not Applicable	
New Hampshire	Yes	No	No	
New Jersey	No	No	Yes	
New Mexico	Yes	No	No	
New York City¹⁵	Depends	Depends	Depends	
North Carolina	No	Yes ¹⁶	No	
North Dakota	Yes	No	No	

⁶ IL: See IITA Section 304(a)(3)(B-2).

⁷ IL: Yes for all taxpayers who are not dealers with respect to the property.

⁸ IL: Yes for dealers.

⁹ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

¹⁰ IA: Iowa Administrative Rule 701-54.2(3) provides examples on how income from intangibles should be sourced.

¹¹ KS: Cost of performance (plurality method).

¹² ME: Maine defines market as the location of use, not the location of the customer.

¹³ MD: Receipts from Intangible - Gross receipts from intangibles are included in the numerator of the sales factor based on the average of the property and payroll factors. See Code of Maryland Regulations 03.04.03.08C(3)(d). Maryland's portion of intangible receipts are as followed - Total intangible receipts in the denominator multiplied by the average of the property and payroll factors.

¹⁴ MA: For tax years commencing on or after 1/01/14.

¹⁵ NYC: The answer will often depend on the tax type and property type.

¹⁶ NC: Receipts from intangibles are sourced to the location of the payor. See N.C. Gen. Stat. 105-130.4(I)(3)(b).

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Oklahoma ¹⁷	No Response ¹⁸	No Response ¹⁹	No Response ²⁰	
Oregon	Yes	No	No	
Pennsylvania	No	No	Yes	Receipts are sourced based upon where the service is delivered. Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.
Rhode Island	No	Yes	No	
Tennessee ²¹	Not Applicable	Not Applicable	Yes	
Texas	No	No	Yes	Depends on the type of intangible. Sales of intangibles are apportioned based on the location of payor. Revenues from a trademark, franchise, or license are Texas receipts to the extent used in Texas. Revenue from a patent royalty is a Texas receipt to the extent utilized in production, manufacturing or other processing in Texas. Revenue from a copyright royalty is a Texas receipt to the extent utilized in printing or other publication in Texas. See Franchise Tax Rule 3.591(e)(21). Sales and revenue from licensing of a computer program are apportioned to the location of payor. See Franchise Tax Rule 3.591(e)(3).
Utah ²²	No	Yes	Yes	Receipts from sales of intangible property are sourced to this state if and to the extent that the intangible property is used in this state.
Vermont	No	Yes	No	
Virginia	Yes ²³	No	No	
West Virginia	Yes	No	No	
Wisconsin	No	Yes	No	

¹⁷ OK: From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "billing address" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

¹⁸ OK: Policy not yet developed.

¹⁹ OK: *Id.*

²⁰ OK: *Id.*

²¹ TN: Tenn. Code Ann. §67-4-2012(j) requires an entity doing business in Tennessee that licenses the use of intangible intellectual property to another Tennessee entity and that is paid royalties based on the licensee entity's sale of products or other activity in Tennessee must source the royalty income to Tennessee. 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

²² UT: UCA 59-7-319(4) provides as follows: "(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c). (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year."

²³ VA: See Va. Code §58.1-416; 23 VAC 10-120-230.

Sourcing Receipts: Intangibles (Part 2 of 3)

State ¹	Intangible sold only in-state ²	Intangible sold more in-state than out-of-state ³	Intangible sold more out-of-state than in-state ⁴	Intangible used in state at time of sale ⁵	Intangible used both in and out-of-state at time of sale ⁶	Licenses, leases, or rents intangible used in-state ⁷	Licenses, leases or rents intangible used both in and out-of-state ⁸
Alabama	Yes	Not Applicable ⁹	Not Applicable ¹⁰	Yes	Yes ¹¹	Yes	Yes
Alaska	Yes	Yes	No	No Response ¹²	No Response ¹³	No Response ¹⁴	No Response ¹⁵
Arizona	Yes	Yes	No	Yes	Yes	Yes	Yes
Arkansas	No	No	No	Yes	Yes	Depends	Depends
California	Depends ¹⁶	Depends ¹⁷	Depends ¹⁸	Yes	Yes	Yes	Yes ¹⁹
Colorado	No	No	No	Yes	Yes	Yes	Yes
Connecticut ²⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	No Response	No Response	No Response	Yes	Yes	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the corporation sells the intangible only in your state?

³ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the corporation sells the intangible in your state and outside your state, and the intangible is sold more in your state than in any other state, based on costs of performance?

⁴ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the corporation sells the intangible in your state and outside your state, and the intangible is sold more outside your state than in your state, based on costs of performance?

⁵ Are receipts from intangible personal property allocated to your state when the intangible is used in your state at the time of sale?

⁶ Are receipts from intangible personal property allocated to your state when the intangible is used both in your state and outside your state at the time of sale?

⁷ Are receipts from intangible personal property allocated to your state when the corporation licenses, leases, rents, or otherwise grants the use of an intangible used in your state?

⁸ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the corporation licenses, leases, rents, or otherwise grants the use of an intangible that is used both in your state and outside your state?

⁹ AL: Market based sourcing applied.

¹⁰ AL: *Id.*

¹¹ AL: At least some portion.

¹² AK: Alaska has no position at this time.

¹³ AK: *Id.*

¹⁴ AK: *Id.*

¹⁵ AK: *Id.*

¹⁶ CA: RTC §25136(a)(2) provides that sales from intangible property are in this state to the extent the property is used in this state. The relevant inquiry is whether the intangible is used in this state, which may not be the case even though it is sold only in this state.

¹⁷ CA: According to RTC §25136(a)(2), the answer would depend on whether the intangible is actually used in this state and to what extent. California uses market-based, not cost-of-performance sourcing rules with respect to intangibles, but there seems to be a possibility that the intangible is being used in this state since a proportion is sold in this state.

¹⁸ CA: Depends on whether the intangible is used in this or the other state, and to what extent.

¹⁹ CA: See RTC §25136(a)(2) and CCR §25136-2(d).

²⁰ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

State ¹	Intangible sold only in-state ²	Intangible sold more in-state than out-of-state ³	Intangible sold more out-of-state than in-state ⁴	Intangible used in state at time of sale ⁵	Intangible used both in and out-of-state at time of sale ⁶	Licenses, leases, or rents intangible used in-state ⁷	Licenses, leases or rents intangible used both in and out-of-state ⁸
District of Columbia	Yes	No	No	Yes	Yes	Yes	Yes
Florida	Yes ²¹	No Response ²²	No Response ²³	Depends ²⁴	Depends ²⁵	Depends ²⁶	Yes ²⁷
Georgia	Yes	No Response ²⁸	No Response ²⁹	No Response ³⁰	No Response ³¹	No Response ³²	No Response ³³
Hawaii	Yes	Yes ³⁴	No ³⁵	Yes ³⁶	Yes ³⁷	Yes ³⁸	Yes ³⁹
Idaho	No Response ⁴⁰	No Response ⁴¹	No Response ⁴²	Yes	No Response ⁴³	Yes ⁴⁴	No Response ⁴⁵
Illinois ⁴⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana ⁴⁷	Yes	Yes	No	Yes	Yes	Yes	Yes
Iowa ⁴⁸	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas ⁴⁹	No	Yes	No	No	Yes	Yes	Yes
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Yes	No Response ⁵⁰	No Response ⁵¹	Yes	No Response ⁵²	Yes	No Response ⁵³

²¹ FL: See Fla. Admin. Code Rules 12C-1.0155(1)(f) and (2)(I).

²² FL: *Id.*

²³ FL: *Id.*

²⁴ FL: Depends on materiality of the income and the facts and circumstances. See Rule 12C-1.0155, F.A.C.

²⁵ FL: *Id.*

²⁶ FL: *Id.*

²⁷ FL: See Fla. Admin. Code Rules 12C-1.0155(1)(f) and (2)(I).

²⁸ GA: See O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

²⁹ GA: *Id.*

³⁰ GA: *Id.*

³¹ GA: *Id.*

³² GA: *Id.*

³³ GA: *Id.*

³⁴ HI: See § 18-235-38-03(d) and § 18-235-38-03(e), HAR. Sales of intangibles are attributed according to the location where the income producing activity is performed.

³⁵ HI: *Id.*

³⁶ HI: See § 18-235-38-03(d) and § 18-235-38-03(e), HAR.

³⁷ HI: *Id.*

³⁸ HI: *Id.*

³⁹ HI: *Id.*

⁴⁰ ID: See IDAPA 35.01.01.550 - Sales Other Than Sales of Tangible Personal Property in Idaho. Cost of performance rules can apply.

⁴¹ ID: *Id.*

⁴² ID: *Id.*

⁴³ ID: *Id.*

⁴⁴ ID: *Id.*

⁴⁵ ID: *Id.*

⁴⁶ IL: Insufficient information is provided. See IITA Section 304(a)(3)(B-2).

⁴⁷ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

⁴⁸ IA: Iowa Administrative Rule 701-54.2(3) provides examples on how income from intangibles should be sourced.

⁴⁹ KS: Cost of performance (plurality method).

⁵⁰ ME: Apportioned according to portion of use (see § 5211(16-A)(B)).

⁵¹ ME: *Id.*

⁵² ME: *Id.*

⁵³ ME: *Id.*

State ¹	Intangible sold only in-state ²	Intangible sold more in-state than out-of-state ³	Intangible sold more out-of-state than in-state ⁴	Intangible used in state at time of sale ⁵	Intangible used both in and out-of-state at time of sale ⁶	Licenses, leases, or rents intangible used in-state ⁷	Licenses, leases or rents intangible used both in and out-of-state ⁸
Maryland ⁵⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ⁵⁵	Yes	Depends	Depends	No Response	Yes	Yes	Depends
Michigan	No Response ⁵⁶	No Response ⁵⁷	No Response ⁵⁸	Yes ⁵⁹	Yes ⁶⁰	Yes ⁶¹	Yes ⁶²
Minnesota	Yes	No Response ⁶³	No Response ⁶⁴	Yes	No Response ⁶⁵	Yes	No Response ⁶⁶
Mississippi	Yes	No	No	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	No	Yes	Yes ⁶⁷	Yes ⁶⁸	Yes
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	Yes	No	No	Yes	Yes	Yes	Yes
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	No	Yes	Yes	Yes ⁶⁹	Yes ⁷⁰
New Mexico	Yes	Yes	No	Not Applicable	Not Applicable	Not Applicable	Yes
New York City⁷¹	Depends	Depends	Depends	Depends	Depends	Yes	Yes
North Carolina	Yes	No	No	Yes	Yes	Yes	Yes
North Dakota ⁷²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ⁷³	No Response	No Response	No Response	No Response	No Response	No Response	No Response

⁵⁴ MD: Receipts from Intangible - Gross receipts from intangibles are included in the numerator of the sales factor based on the average of the property and payroll factors. See Code of Maryland Regulations 03.04.03.08C(3)(d). Maryland's portion of intangible receipts are as followed - Total intangible receipts in the denominator multiplied by the average of the property and payroll factors.

⁵⁵ MA: Market based where used. See 830 CMR 63.38.1. See TIR 13-5. The receipts from the license of intangible property are in Massachusetts if and to the extent the intangible is used in Massachusetts. See 830 CMR 63.38.1(9).

⁵⁶ MI: Receipts from the sale of intangible personal property are not sourced based on cost of performance. Instead, they are sourced to Michigan based where the property is used by the purchaser. See MCL 206.665(1)(e).

⁵⁷ MI: *Id.*

⁵⁸ MI: *Id.*

⁵⁹ MI: "Royalties and other income received for the use of or for the privilege of using intangible property . . . are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state." See MCL 206.665(1)(e).

⁶⁰ MI: *Id.*

⁶¹ MI: *Id.*

⁶² MI: *Id.*

⁶³ MN: Intangible property used in more than one state must be apportioned pro rata according to the use in this state. See Minn. Stat. section 290.191, subd. 5(i).

⁶⁴ MN: *Id.*

⁶⁵ MN: *Id.*

⁶⁶ MN: *Id.*

⁶⁷ MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.

⁶⁸ MO: *Id.*

⁶⁹ NJ: See N.J.A.C. 18:7-8.11.

⁷⁰ NJ: *Id.*

⁷¹ NYC: **The answer will often depend on the tax type and property type.**

⁷² ND: To the extent includable in the sales factor, for receipts from other than from tangible personal property, sales attributable to an income producing activity performed within and without ND are sourced to this state based on the direct costs of performance of each income producing activity.

⁷³ OK: Policy not yet developed. From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if

State ¹	Intangible sold only in-state ²	Intangible sold more in-state than out-of-state ³	Intangible sold more out-of-state than in-state ⁴	Intangible used in state at time of sale ⁵	Intangible used both in and out-of-state at time of sale ⁶	Licenses, leases, or rents intangible used in-state ⁷	Licenses, leases or rents intangible used both in and out-of-state ⁸
Oregon	Yes	Yes	No	Yes	Depends ⁷⁴	Depends ⁷⁵	Depends ⁷⁶
Pennsylvania	Yes	No Response ⁷⁷	No Response ⁷⁸	Yes ⁷⁹	No Response ⁸⁰	Yes	Yes ⁸¹
Rhode Island	Yes	No	No	Yes	Yes	Yes	Yes
Tennessee ⁸²	Yes	No Response	No Response	Not Applicable	Not Applicable	Yes	Yes
Texas ⁸³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Utah ⁸⁴	Yes	No	No	Yes	Yes ⁸⁵	Yes	Yes
Vermont	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Virginia ⁸⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	Yes	No	Yes	Yes	Yes	Yes
Wisconsin	Yes	No	No	Yes	Yes	Yes	Yes

the receipts are otherwise attributable to this state’s marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A “billing address” means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer’s account is mailed.

⁷⁴ OR: Refer to ORS 314.665 and Administrative Rules.

⁷⁵ OR: *Id.*

⁷⁶ OR: *Id.*

⁷⁷ PA: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

⁷⁸ PA: *Id.*

⁷⁹ PA: *Id.*

⁸⁰ PA: Receipts are sourced based upon where the service is delivered. Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

⁸¹ PA: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

⁸² TN: Tenn. Code Ann. §67-4-2012(j) requires an entity doing business in Tennessee that licenses the use of intangible intellectual property to another Tennessee entity and that is paid royalties based on the licensee entity’s sale of products or other activity in Tennessee must source the royalty income to Tennessee. 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

⁸³ TX: Depends on the type of intangible. Sales of intangibles are apportioned based on the location of payor. Revenues from a trademark, franchise, or license are Texas receipts to the extent used in Texas. Revenue from a patent royalty is a Texas receipt to the extent utilized in production, manufacturing or other processing in Texas. Revenue from a copyright royalty is a Texas receipt to the extent utilized in printing or other publication in Texas. See Rule 3.591(e)(21). Revenue from the sale or licensing of a computer program are apportioned to the location of payor. See Rule 3.591(e)(3).

⁸⁴ UT: UCA 59-7-319(4) provides as follows: “(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c). (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year.”

⁸⁵ UT: Yes, proportionally.

⁸⁶ VA: Because Virginia uses the costs-of-performance method of sourcing sales from intangibles, it is not relevant where the services are used.

Sourcing Receipts: Intangibles (Part 3 of 3)

State ¹	Customer's payment contingent on productivity or use of intangible in-state ²	Customer's payment contingent on productivity or use of intangible both in and out-of-state ³	Intangible used in marketing a good or service ⁴	Intangible is contract right authorizing holder to conduct business in specific geographic area ⁵
Alabama	Yes	Yes ⁶	Yes	Yes
Alaska ⁷	No Response	No Response	No Response	No Response
Arizona	Yes	Yes	Yes	Yes
Arkansas	Depends	Depends	Depends	Depends
California	Depends ⁸	Depends	Yes	Yes
Colorado	Yes	Yes	No Response	Yes
Connecticut ⁹	No Response	No Response	No Response	No Response
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	Yes
Florida ¹⁰	Depends	Depends	Depends	Depends
Georgia ¹¹	No Response	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes ¹²	Yes ¹³

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the intangible is used both in your state and outside your state and the customer's payment is contingent on the productivity, use or disposition of the intangible?

³ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the intangible is used in your state and the customer's payment is contingent on the productivity, use or disposition of the intangible?

⁴ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the intangible is used in marketing a good or service, and the good or service being marketed is purchased by an in-state consumer?

⁵ Are receipts from intangible personal property added to the numerator of the corporation's sales factor when the intangible is a contract right, government license or similar intangible authorizing the holder to conduct a business activity in a specific geographic area that is used in, or otherwise associated with, your state?

⁶ AL: At least some portion.

⁷ AK: Alaska has no position at this time.

⁸ CA: Under Regulation §25136-2(d), sales from intangible property are assigned to California to the extent the property is used in this state to the extent that the contract between the taxpayer and the purchaser, or the taxpayer's books and records kept in the normal course of business, indicate that the intangible property is used in California at the time of sale. However, this is a rebuttable presumption.

⁹ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

¹⁰ FL: Depends on materiality of the income and the facts and circumstances. See Rule 12C-1.0155, F.A.C.

¹¹ GA: See O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

¹² HI: See § 18-235-38-03(d) and § 18-235-38-03(e), HAR.

¹³ HI: *Id.*

State ¹	Customer's payment contingent on productivity or use of intangible in-state ²	Customer's payment contingent on productivity or use of intangible both in and out-of-state ³	Intangible used in marketing a good or service ⁴	Intangible is contract right authorizing holder to conduct business in specific geographic area ⁵
Idaho ¹⁴	No Response	No Response	No Response	No Response
Illinois ¹⁵	No Response	No Response	No Response	No Response
Indiana ¹⁶	Yes	Yes	Yes	Yes
Iowa ¹⁷	Yes	Yes	Yes	Yes
Kansas ¹⁸	No	Yes	No	No
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	No Response	No Response	No Response	No Response
Maine	Yes	No Response ¹⁹	Yes	Yes
Maryland ²⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ²¹	Yes	Depends	Depends	Depends
Michigan ²²	Yes	Yes	Yes	Yes
Minnesota	Yes	No Response ²³	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri ²⁴	Yes	Yes	Yes	Yes
Montana	No Response	No Response	No Response	No Response
Nebraska	No ²⁵	No ²⁶	No ²⁷	Yes
New Hampshire	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	Yes
New Mexico	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹⁴ ID: See IDAPA 35.01.01.550 - Sales Other Than Sales of Tangible Personal Property in Idaho. Cost of performance rules can apply.

¹⁵ IL: Insufficient information is provided. See IITA Section 304(a)(3)(B-2).

¹⁶ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

¹⁷ IA: Iowa Administrative Rule 701-54.2(3) provides examples on how income from intangibles should be sourced.

¹⁸ KS: Cost of performance (plurality method).

¹⁹ ME: Apportioned according to portion of use (see §5211(16-A)(B)).

²⁰ MD: Receipts from Intangible - Gross receipts from intangibles are included in the numerator of the sales factor based on the average of the property and payroll factors. See Code of Maryland Regulations 03.04.03.08C(3)(d). Maryland's portion of intangible receipts are as followed - Total intangible receipts in the denominator multiplied by the average of the property and payroll factors.

²¹ MA: Market based where used. See 830 CMR 63.38.1. See TIR 13-5. The receipts from the license of intangible property are in Massachusetts if and to the extent the intangible is used in Massachusetts. See 830 CMR 63.38.1(9).

²² MI: "Royalties and other income received for the use of or for the privilege of using intangible property . . . are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state." See MCL 206.665(1)(e).

²³ MN: Intangible property used in more than one state must be apportioned pro rata according to the use in this state. See Minn. Stat. section 290.191, subd. 5(i).

²⁴ MO: If more income-producing activity based on cost of performance is performed in Missouri than any other state.

²⁵ NE: If the intangible is used in Nebraska, it is sourced to Nebraska, regardless of other contingencies.

²⁶ NE: *Id.*

²⁷ NE: *Id.*

State ¹	Customer's payment contingent on productivity or use of intangible in-state ²	Customer's payment contingent on productivity or use of intangible both in and out-of-state ³	Intangible used in marketing a good or service ⁴	Intangible is contract right authorizing holder to conduct business in specific geographic area ⁵
New York City²⁸	Yes	Yes	Depends	Yes
North Carolina	Yes	Yes	Yes	Yes
North Dakota ²⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ³⁰	No Response	No Response	No Response	No Response
Oregon ³¹	Depends	Depends	Depends	Depends
Pennsylvania	Not Applicable	Not Applicable ³²	Not Applicable	Not Applicable
Rhode Island	Yes	Yes	Yes	Yes
Tennessee ³³	Yes	Yes ³⁴	Yes ³⁵	Yes
Texas ³⁶	No Response	No Response	No Response	No Response
Utah ³⁷	Yes	Yes ³⁸	Yes ³⁹	Yes
Vermont	Yes	Yes	Yes	Yes
Virginia ⁴⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	No	Yes
Wisconsin	Yes	Yes	Yes	Yes

²⁸ NYC: The answer will often depend on the tax type and property type.

²⁹ ND: To the extent includable in the sales factor, for receipts from other than from tangible personal property, sales attributable to an income producing activity performed within and without ND are sourced to this state based on the direct costs of performance of each income producing activity.

³⁰ OK: Policy not yet developed. From OTC Rule 710:50-17-71. Apportionment formula factors. (ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. (See 68 O.S. §2358(A)(5)). A customer within Oklahoma means (I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or (II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "billing address" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

³¹ OR: Refer to ORS 314.665 and Administrative Rules.

³² PA: Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

³³ TN: Tenn. Code Ann. §67-4-2012(j) requires an entity doing business in Tennessee that licenses the use of intangible intellectual property to another Tennessee entity and that is paid royalties based on the licensee entity's sale of products or other activity in Tennessee must source the royalty income to Tennessee. 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

³⁴ TN: Only when the intangible is a patent or copyright.

³⁵ TN: Yes, to the extent the intangible is used in Tennessee.

³⁶ TX: Depends on the type of intangible. Sales of intangibles are apportioned based on the location of payor. Revenues from a trademark, franchise, or license are Texas receipts to the extent used in Texas. Revenue from a patent royalty is a Texas receipt to the extent utilized in production, manufacturing or other processing in Texas. Revenue from a copyright royalty is a Texas receipt to the extent utilized in printing or other publication in Texas. See Rule 3.591(e)(21). Revenue from the sale or licensing of a computer program are apportioned to the location of payor. See Rule 3.591(e)(3).

³⁷ UT: UCA 59-7-319(4) provides as follows: "(a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state. (b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to this state in accordance with Subsection (4)(c). (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in connection with intangible property that is considered to be in this state is the percentage of the use of the intangible property that occurs in this state during the taxable year."

³⁸ UT: Yes, proportionally.

³⁹ UT: *Id.*

⁴⁰ VA: Because Virginia uses the costs-of-performance method of sourcing sales from intangibles, it is not relevant where the services are used.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Part 1 of 5)

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Alabama	No	Yes	No	
Alaska ⁵	No Response	No Response	No Response	
Arizona ⁶	No Response	No Response	No Response	
Arkansas	No	No	No	
California	No	No	Yes	
Colorado	Yes ⁷	No	No	
Connecticut	No	Yes⁸	No	
Delaware ⁹	No Response	No Response	Yes	The location of the out of state seller's server is the determinative factor to sourcing sales to in-state customers.
District of Columbia ¹⁰	No	Yes	No	
Florida ¹¹	Depends	Depends	Depends	
Georgia ¹²	No Response	No Response	No Response	
Hawaii ¹³	No Response	No Response	No Response	
Idaho ¹⁴	No Response	No Response	No Response	
Illinois	No	Yes	No	Each transaction must be analyzed separately.

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Receipts from cloud computing or SaaS transactions are generally sourced to your state based on costs of performance.

³ Receipts from cloud computing or SaaS transactions are generally sourced to your state based on the **location of the market**.

⁴ Receipts from cloud computing or SaaS transactions are generally sourced to your state based on something other than costs of performance or the market.

⁵ AK: Alaska has no position at this time.

⁶ AZ: Not yet determined.

⁷ CO: Proportionate cost of performance.

⁸ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

⁹ DE: Delaware will source sales depending on where the server is located and whether the software is considered "canned software" or "specialized software." Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.

¹⁰ DC: District treats software as tangible property.

¹¹ FL: Depends on the facts and circumstances and the specific activity/service provided.

¹² GA: For guidance on computer software, see O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

¹³ HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

¹⁴ ID: The Tax Commission has made no ruling on this fact situation.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Indiana ¹⁵	No	Yes	No	
Iowa ¹⁶	No	Yes	Not Applicable	
Kansas ¹⁷	Yes	No	No	
Kentucky	Yes	Not Applicable	Not Applicable	
Louisiana	No Response	No Response	No Response	
Maine	No	Yes	No	
Maryland	No	No	Yes	
Massachusetts ¹⁸	No Response	Yes	No Response	
Michigan	No	No	Yes	
Minnesota	No	Yes	No	
Mississippi	No	Yes	No	
Missouri	Yes	No	No	
Montana	Yes	No	No	
Nebraska	No	Yes	No	
New Hampshire	No Response	No Response	No Response	
New Jersey	No	Yes	No	
New Mexico	Yes	No	No	
New York City¹⁹	Depends	Depends	Depends	
North Carolina	No Response	No Response	No Response	
North Dakota	Yes	No	No	
Oklahoma ²⁰	No Response	No Response	No Response	
Oregon	Yes	No	No	
Pennsylvania	No	Yes	No	
Rhode Island	No	Yes	No	
Tennessee	No	Yes	No	

¹⁵ IN: The department is still in the process of developing its position with regard to these transactions.

¹⁶ IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.

¹⁷ KS: Delivery to customer of canned software, either electronically or via a tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

¹⁸ MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.

¹⁹ NYC: **The answer depends on the tax type. For sourcing rules applicable to receipts from transactions involving digital products under the business corporation tax, please refer to Administrative Code Section 11-654.2(4).**

²⁰ OK: Policy not yet developed.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	If other, please explain
Texas	No	No	No Response	A receipt from "Internet hosting" is a receipt from business done in Texas only if the customer to whom the service is provided is located in Texas. Texas Tax Code Section 171.106(g). For purposes of the Texas Franchise Tax, "internet hosting" is defined by reference to the term as it is used in the sales tax statute and means providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. See Texas Tax Code Section 171.106(g) and 151.108(a). Sourcing of all other cloud computing or SaaS transactions is based on the specific transaction and apportioned according to the apportionment rule. See Rule 3.591.
Utah ²¹	No	Yes	No	
Vermont	No	Yes	No	
Virginia ²²	Yes	No	No	
West Virginia	No	Yes	No	
Wisconsin	No	Yes	No	

²¹ UT: [These] answers reflect Utah's position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

²² VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. Cf. P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. See 23 VAC 10-120-230 and P.D. 16-135.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Part 2 of 5)

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the sale of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Alabama	Depends	Not Applicable ⁹	Not Applicable ¹⁰	Yes ¹¹	Yes ¹²	Depends	Depends ¹³
Alaska ¹⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arkansas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable ¹⁶
California	No Response	No Response	No Response	No Response	No Response	No Response	No Response ¹⁷
Colorado	No Response	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable ¹⁸
Connecticut ¹⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property?

³ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance?

⁴ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance?

⁵ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state?

⁶ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state?

⁷ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state?

⁸ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state in another situation?

⁹ AL: Not applicable after 12/31/2010.

¹⁰ AL: *Id.*

¹¹ AL: Yes, if sourced as an intangible.

¹² AL: Yes, if sourced as a service.

¹³ AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.

¹⁴ AK: Alaska has no position at this time.

¹⁵ AZ: Not yet determined.

¹⁶ AR: See ACA 26-51-717(b).

¹⁷ CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not issued formal guidance regarding the matter.

¹⁸ CO: Receipts treated as sale of a service and apportioned based on pro rata cost of performance.

¹⁹ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this**

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the sale of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Delaware ²⁰	No Response	No Response	No Response	No Response	No Response	No Response	Yes ²¹
District of Columbia ²²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida ²³	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Georgia ²⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii ²⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Illinois ²⁷	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Indiana ²⁸	No	No	No	Yes	No	No	No
Iowa ²⁹	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas ³⁰	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kentucky	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ³¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maryland	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ³²	Depends	No	Depends	Depends	Depends	Depends	No

state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.” See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.

²⁰ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.

²¹ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned Software is considered TPP for Delaware purposes.

²² DC: District treats software as tangible property.

²³ FL: Depends on the facts and circumstances and the specific activity/service provided.

²⁴ GA: For guidance on computer software, see O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

²⁵ HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

²⁶ ID: The Tax Commission has made no ruling on this fact situation.

²⁷ IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer.

²⁸ IN: The department is still in the process of developing its position with regard to these transactions.

²⁹ IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.

³⁰ KS: Delivery to customer of canned software, either electronically or via a tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

³¹ LA: The Department has no position on this issue at this time.

³² MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the sale of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Michigan ³³	No Response	No	No	No Response	No Response	No Response	No Response
Minnesota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Mississippi	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No Response
Missouri	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New York City³⁴	Depends	Depends	Depends	Depends	Depends	Depends	Depends
North Carolina	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Dakota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ³⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ³⁶	Depends	Depends	Depends	Depends	Depends	Depends	Depends

system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.

³³ MI: See *Auto-Owners v. Dep't of Treasury* 313 Mich App 56 (2015).

³⁴ NYC: The answer depends on the tax type. For sourcing rules applicable to receipts from transactions involving digital products under the business corporation tax, please refer to Administrative Code Section 11-654.2(4).

³⁵ OK: Policy not yet developed.

³⁶ OR: Oregon Administrative Rule (OAR) 150-314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the sale of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Pennsylvania ³⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Rhode Island	Yes	No	No	Yes	Yes	No	Not Applicable
Tennessee	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Utah ³⁸	Yes	No	No	Yes	Depends	Depends	Yes
Vermont	Yes	No	No	Yes	No ³⁹	No	No
Virginia ⁴⁰	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Wisconsin	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

³⁷ PA: To be determined.

³⁸ UT: [These] answers reflect Utah's position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

³⁹ VT: Billing address could be a factor in determining sourcing.

⁴⁰ VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. Cf. P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. See 23 VAC 10-120-230 and P.D. 16-135.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Part 3 of 5)

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the lease, license or rental of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Alabama	Depends	Not Applicable ⁹	Not Applicable ¹⁰	Depends	Depends	Depends	Depends ¹¹
Alaska ¹²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona ¹³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arkansas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable ¹⁴
California	No Response	No Response	No Response	No Response	No Response	No Response	No Response ¹⁵
Colorado	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property?

³ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance?

⁴ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance?

⁵ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state?

⁶ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state?

⁷ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state?

⁸ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the lease, license or rental of tangible personal property, are receipts from these transactions sourced to your state in any other situation?

⁹ AL: Not applicable after 12/31/2010.

¹⁰ AL: *Id.*

¹¹ AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.

¹² AK: Alaska has no position at this time.

¹³ AZ: Not yet determined.

¹⁴ AR: See ACA 26-51-717(b).

¹⁵ CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the lease, license or rental of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Connecticut ¹⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response	Yes ¹⁸
District of Columbia ¹⁹	Not Applicable	Not Applicable	Not Applicable ²⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida ²¹	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Georgia ²²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii ²³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Illinois ²⁵	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Indiana ²⁶	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa ²⁷	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas ²⁸	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kentucky	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ²⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹⁶ CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. “Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.” See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.

¹⁷ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.

¹⁸ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned Software is considered TPP for Delaware purposes.

¹⁹ DC: District treats software as tangible property.

²⁰ DC: The District is working towards market based, not cost performance.

²¹ FL: Depends on the facts and circumstances and the specific activity/service provided.

²² GA: For guidance on computer software, see O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

²³ HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

²⁴ ID: The Tax Commission has made no ruling on this fact situation.

²⁵ IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer.

²⁶ IN: The department is still in the process of developing its position with regard to these transactions.

²⁷ IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.

²⁸ KS: Delivery to customer of canned software, either electronically or via a tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

²⁹ LA: The Department has no position on this issue at this time.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State¹	Receipts characterized as receipts from the lease, license or rental of tangible personal property²	Income-producing activity performed more in-state than out-of-state³	Income-producing activity performed more out-of-state than in-state⁴	Software used in state⁵	Customer has in-state billing address⁶	Customer has out-of-state billing address⁷	Other⁸
Maryland	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ³⁰	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Michigan ³¹	No Response	No	No	No Response	No Response	No Response	No Response
Minnesota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Mississippi	Yes	No	No	Yes	Yes	No	No Response
Missouri	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New York City³²	Depends	Depends	Depends	Depends	Depends	Depends	Depends
North Carolina	No	Not Applicable ³³	Not Applicable ³⁴	Not Applicable ³⁵	Not Applicable ³⁶	Not Applicable ³⁷	Not Applicable ³⁸
North Dakota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ³⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ⁴⁰	Depends	Depends	Depends	Depends	Depends	Depends	Depends

³⁰ MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where...the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.

³¹ MI: See *Auto-Owners v. Dep't of Treasury* 313 Mich App 56 (2015).

³² **NYC: The answer depends on the tax type. For sourcing rules applicable to receipts from transactions involving digital products under the business corporation tax, please refer to Administrative Code Section 11-654.2(4).**

³³ NC: The situs of the software is the location of its utilization. North Carolina does not have "market-based sourcing."

³⁴ NC: *Id.*

³⁵ NC: *Id.*

³⁶ NC: *Id.*

³⁷ NC: *Id.*

³⁸ NC: *Id.*

³⁹ OK: Policy not yet developed.

⁴⁰ OR: Oregon Administrative Rule (OAR) 150-314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from the lease, license or rental of tangible personal property ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Pennsylvania ⁴¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Rhode Island	Yes	No	No	Yes	Yes	No	Not Applicable
Tennessee	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Utah ⁴²	Yes	No	No	Yes	Depends	Depends	Yes
Vermont	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia ⁴³	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Wisconsin	No ⁴⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

⁴¹ PA: To be determined.

⁴² UT: [These] answers reflect Utah's position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

⁴³ VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. Cf. P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. See 23 VAC 10-120-230 and P.D. 16-135.

⁴⁴ WI: Gross receipts from the use of computer software are in this state if the purchaser uses the computer software at a location in this state.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Part 4 of 5)

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from intangibles ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Alabama	Depends	Not Applicable ⁹	Not Applicable ¹⁰	Depends	Depends	Depends	Depends ¹¹
Alaska ¹²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona ¹³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arkansas	Depends	No	No	Depends	Depends	Depends	Depends ¹⁴
California	No Response ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response ¹⁶
Colorado	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale, lease, license or rental of intangible personal property?

³ If the response is "yes" to the characterization of receipts from cloud computing or SaaS as receipts from the sale, lease, license or rental of intangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance?

⁴ If the response is "yes" to the characterization of receipts from cloud computing or SaaS as receipts from the sale, lease, license or rental of intangible personal property, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance?

⁵ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the software is used in your state?

⁶ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is in your state?

⁷ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state when the customer's billing address is not in your state?

⁸ If the response is "yes" to receipts from cloud computing or SaaS transactions being characterized as receipts from the sale of tangible personal property, are receipts from these transactions sourced to your state in any other situation?

⁹ AL: Not applicable after 12/31/2010.

¹⁰ AL: *Id.*

¹¹ AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.

¹² AK: Alaska has no position at this time.

¹³ AZ: Not yet determined.

¹⁴ AR: See ACA 26-51-717(b).

¹⁵ CA: In *Microsoft Corp v. Franchise Tax Board* (2012) 212 Cal.App.4th 78, the Court of Appeal ruled that the right to replicate and install software is an intangible property right. It did not decide whether the sale of the software itself is a sale of tangible or intangible property.

¹⁶ CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from intangibles ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Connecticut ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware ¹⁸	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable ¹⁹
District of Columbia ²⁰	Not Applicable	Not Applicable	Not Applicable ²¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida ²²	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Georgia ²³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii ²⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Illinois	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Indiana ²⁶	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa ²⁷	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas ²⁸	Yes	Yes	No	No	No	No	No
Kentucky	Yes	Yes	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ²⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maryland	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹⁷ CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. “Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.” See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.

¹⁸ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned Software is considered TPP for Delaware purposes. Specialized software is considered a service.

¹⁹ DE: *Id.*

²⁰ DC: District treats software as tangible property. All software in the District of Columbia is subject to the sales tax rate of 5.75%.

²¹ DC: The District is working towards market based, not cost performance.

²² FL: Depends on the facts and circumstances and the specific activity/service provided.

²³ GA: For guidance on computer software, see O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

²⁴ HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

²⁵ ID: The Tax Commission has made no ruling on this fact situation.

²⁶ IN: The department is still in the process of developing its position with regard to these transactions.

²⁷ IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.

²⁸ KS: Delivery to customer of canned software, either electronically or via a tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

²⁹ LA: The Department has no position on this issue at this time.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from intangibles ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Massachusetts ³⁰	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Michigan ³¹	No Response	No	No	No Response	No Response	No Response	No Response
Minnesota	Yes	No Response ³²	No Response ³³	Yes	No	No	No
Mississippi	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Missouri	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New York City³⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	No	Not Applicable ³⁵	Not Applicable ³⁶	Not Applicable ³⁷	Not Applicable ³⁸	Not Applicable ³⁹	Not Applicable ⁴⁰
North Dakota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Oklahoma ⁴¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ⁴²	Depends	Depends	Depends	Depends	Depends	Depends	Depends

³⁰ MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where....the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.

³¹ MI: See *Auto-Owners v. Dep't of Treasury* 313 Mich App 56 (2015).

³² MN: Sales of intangible property is attributed to the state in which the property is used by the purchaser. See Minn. Stat. section 290.191, subd. 5(i).

³³ MN: *Id.*

³⁴ **NYC: For sourcing rules applicable to receipts from transactions involving digital products under the business corporation tax, please refer to Administrative Code Section 11-654.2(4).**

³⁵ NC: The situs of the software is the location of its utilization. North Carolina does not have "market-based sourcing."

³⁶ NC: *Id.*

³⁷ NC: *Id.*

³⁸ NC: *Id.*

³⁹ NC: *Id.*

⁴⁰ NC: *Id.*

⁴¹ OK: Policy not yet developed.

⁴² OR: Oregon Administrative Rule (OAR) 150-314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from intangibles ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸
Pennsylvania ⁴³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Rhode Island	Yes	No	No	Yes	Yes	No	Not Applicable
Tennessee	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas	No	Applicable	Applicable	Applicable	Applicable	Applicable	Applicable
Utah ⁴⁴	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Vermont	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia ⁴⁵	Yes	Yes	No	No	No	No	No
West Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Wisconsin	Yes ⁴⁶	No	No	Yes ⁴⁷	No	No	No

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

⁴³ PA: To be determined.

⁴⁴ UT: [These] answers reflect Utah's position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

⁴⁵ VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. Cf. P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. See 23 VAC 10-120-230 and P.D. 16-135.

⁴⁶ WI: Gross receipts from the use of computer software are in this state if the purchaser uses the computer software at a location in this state.

⁴⁷ WI: Gross receipts from services are in this state if the purchaser receives the benefit of the service in this state. If the service relates to real property that is located in this state, tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state, the service is provided to an individual who is physically present in this state at the time that the service is received, or the service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state, then the purchaser is considered to have received the benefit of the service in this state.

Sourcing Receipts: Cloud Computing or Software as a Service (SaaS) Transactions (Part 5 of 5)

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from services ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸	Consider whether prewritten or custom ⁹
Alabama	Depends	Not Applicable ¹⁰	Not Applicable ¹¹	Depends	Depends	Depends	Depends ¹²	Yes
Alaska ¹³	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona ¹⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arkansas	Depends	No	No	Depends	Depends	Depends	Depends ¹⁵	No
California	No Response	No Response	No Response	No Response	No Response	No Response	No Response ¹⁶	Yes
Colorado	Yes	No Response	No Response	Yes	No Response	No Response	Yes ¹⁷	No ¹⁸

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services?

³ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the income-producing activity is performed more in your state than in any other state, based on costs of performance.

⁴ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the income-producing activity is performed more outside your state than in your state, based on costs of performance.

⁵ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the software is used in your state.

⁶ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the customer's billing address is in your state.

⁷ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state when the customer's billing address is not in your state.

⁸ If the response is "yes" to the characterization of receipts from cloud computing or SaaS transactions as receipts from the sale of services, are receipts from these transactions sourced to your state in any other situation.

⁹ Does your state consider whether the software accessed is prewritten or custom computer software when characterizing its receipts?

¹⁰ AL: Not applicable after 12/31/2010.

¹¹ AL: *Id.*

¹² AL: Different sourcing rules apply depending on whether the sale is considered a sale of an intangible, a service or tangible personal property.

¹³ AK: Alaska has no position at this time.

¹⁴ AZ: Not yet determined.

¹⁵ AR: See ACA 26-51-717(b).

¹⁶ CA: The characterization of SAAS transactions has not yet been addressed by the courts in California, and the FTB has not yet issued formal guidance regarding the matter.

¹⁷ CO: Receipts treated as sale of a service and apportioned based on pro rata cost of performance.

¹⁸ CO: Because the writing of the software would be a service, but if the authoring corporation continues to own the software, the access to the software would be access to TPP.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from services ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸	Consider whether prewritten or custom ⁹
Connecticut ¹⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware ²⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response ²¹	Yes
District of Columbia ²²	Not Applicable	Not Applicable	Not Applicable ²³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida ²⁴	Depends	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Georgia ²⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii ²⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Illinois	Yes	No	No	No	No Response ²⁸	No Response ²⁹	Yes ³⁰	No
Indiana ³¹	Yes	No	No	No	No	No	Yes ³²	No
Iowa ³³	Yes	No	No	Yes	Yes	No	Yes ³⁴	No
Kansas ³⁵	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes
Kentucky	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes
Louisiana	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response

¹⁹ CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. “Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.” See Conn. Gen. Stat. § 12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.

²⁰ DE: Delaware will source sales depending on where the server is located and whether the software is considered “canned software” or “specialized software.” Canned software is considered TPP for Delaware purposes. Specialized software is considered a service.

²¹ DE: *Id.*

²² DC: District treats software as tangible property.

²³ DC: The District is working towards market based, not cost performance.

²⁴ FL: Depends on facts and circumstances and the specific activity/service provided.

²⁵ GA: For guidance on computer software, see O.C.G.A. § 48-7-31 and Regulation 560-7-7-.03.

²⁶ HI: The receipts from these types of transactions are subject to Hawaii income tax, however, the law does not specify whether they are treated as tangible personal property, services, or intangible.

²⁷ ID: The Tax Commission has made no ruling on this fact situation.

²⁸ IL: Sales of services are sourced to the state the service is received. If place of receipt cannot be determined, the sale is sourced to the ordering address or the billing address of the customer.

²⁹ IL: *Id.*

³⁰ IL: *Id.*

³¹ IN: The department is still in the process of developing its position with regard to these transactions.

³² IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer’s Indiana source income, the Department is authorized to fairly reflect a taxpayer’s Indiana source income. However, this answer may change upon further Department review.

³³ IA: How receipts are classified from cloud computing or SaaS transactions are irrelevant for Iowa corporation income tax purposes. Iowa uses a market based approach in sourcing these sales regardless of its classification. For purposes of this questionnaire, we considered these transactions to be from the sale of services.

³⁴ IA: **The receipts are sourced based on a market approach based on a destination basis. If it is unclear where the benefit of the service is received, then the billing address is used.**

³⁵ KS: Delivery to customer of canned software, either electronically or via a tangible media, would be treated as a sale of tangible personal property for income tax sourcing purposes.

Receipts from cloud computing or SaaS transactions are sourced to state when:								
State ¹	Receipts characterized as receipts from services ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸	Consider whether prewritten or custom ⁹
Maine	Yes	No	No	Yes	Yes	No	No	No
Maryland	Yes	No	No	Yes	No	No	Yes ³⁶	No
Massachusetts ³⁷	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Depends
Michigan	No Response ³⁸	No ³⁹	No ⁴⁰	No Response ⁴¹	No Response ⁴²	No Response ⁴³	Yes ⁴⁴	Yes
Minnesota	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Mississippi	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Missouri	Yes ⁴⁵	Yes	No	No ⁴⁶	No ⁴⁷	No ⁴⁸	Yes ⁴⁹	Yes
Montana	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Nebraska	Yes	No	No	Yes	Yes	Not Applicable	Yes ⁵⁰	Not Applicable
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes ⁵¹	No	No	No	Yes	Yes	No	No
New Mexico	Yes	Not Applicable ⁵²	Not Applicable ⁵³	Not Applicable ⁵⁴	Not Applicable ⁵⁵	Not Applicable ⁵⁶	Not Applicable ⁵⁷	No
New York City⁵⁸	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response

³⁶ MD: If the receipts are derived from customers within MD as determined in §D of COMAR 03.04.03.08.

³⁷ MA: Generally, sales of cloud computing to customers in Massachusetts are taxable sales of prewritten software, except where the customer is acquiring only non-taxable computing resources or storage capacity (as opposed to acquiring the use of software), or where...the nontaxable computing resources or storage capacity services are bundled with the provision of prewritten operating system software that is incidental to the acquisition of those services, such that the object of the transaction remains the acquisition of non-taxable services. See LR 12-8.

³⁸ MI: See *Auto-Owners v. Dep't of Treasury* 313 Mich App 56 (2015).

³⁹ MI: *Id.*

⁴⁰ MI: *Id.*

⁴¹ MI: *Id.*

⁴² MI: *Id.*

⁴³ MI: *Id.*

⁴⁴ MI: Receipts from the performance of services of this type are included in the numerator based on where recipient receives the benefit of the services. See MCL 206.665(2)(a). See *Auto-Owners v. Dep't of Treasury* 313 Mich App 56 (2015).

⁴⁵ MO: These circumstances may be considered in the application of an alternative method allowed by section 32.200, Art. IV.18.

⁴⁶ MO: *Id.*

⁴⁷ MO: *Id.*

⁴⁸ MO: *Id.*

⁴⁹ MO: Unless more income-producing activity based on cost of performance is performed in Missouri than any other state. Under single factor apportionment, use of capital or labor in Missouri makes the sale "wholly in" or "partly in" Missouri.

⁵⁰ NE: See Neb. Rev. Stat. §77-2734.14(3)(b) for Nebraska's sourcing hierarchy.

⁵¹ NJ: See N.J.A.C. 18:7-8.10(c) for clarification.

⁵² NM: The state cannot provide a definitive position on these issues at this time.

⁵³ NM: *Id.*

⁵⁴ NM: *Id.*

⁵⁵ NM: *Id.*

⁵⁶ NM: *Id.*

⁵⁷ NM: *Id.*

⁵⁸ NYC: For sourcing rules applicable to receipts from transactions involving digital products under the business corporation tax, please refer to Administrative Code Section 11-654.2(4).

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from services ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸	Consider whether prewritten or custom ⁹
North Carolina	Yes	No	No	No	No	No	Yes ⁵⁹	Yes
North Dakota	Yes	Yes	No	Not Applicable ⁶⁰	No	No	No	No
Oklahoma ⁶¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Depends ⁶²	Depends ⁶³	Depends ⁶⁴	No ⁶⁵	No ⁶⁶	Depends ⁶⁷	No ⁶⁸	Yes ⁶⁹
Pennsylvania ⁷⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Rhode Island	Yes	No	No	Yes	Yes	No	Not Applicable	No
Tennessee	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Texas	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Utah ⁷¹	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes
Vermont	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes ⁷²

⁵⁹ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income-producing activity) is performed. See NCGS 105-130.4(I)(3)(c).

⁶⁰ ND: This cannot be “software.” Software is treated as TPP, so it would not be SaaS.

⁶¹ OK: Policy not yet developed.

⁶² OR: Oregon Administrative Rule (OAR) 150-314.665(3) Sales Factor; Sales of Software and Database Services. (1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing the service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.’s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside of Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule. [Stat. Auth.: ORS 305.100 Stats. Implemented: ORS 314.665 Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07.]

⁶³ OR: *Id.*

⁶⁴ OR: *Id.*

⁶⁵ OR: *Id.*

⁶⁶ OR: *Id.*

⁶⁷ OR: *Id.*

⁶⁸ OR: *Id.*

⁶⁹ OR: COTS is considered tangible personal property per OAR 150-314.665(3).

⁷⁰ PA: To be determined.

⁷¹ UT: [These] answers reflect Utah’s position based on the very limited information provided. Such answers may change based on more specific facts and circumstances as to specific transactions that may be occurring on the cloud.

⁷² VT: Custom software is not taxable.

Receipts from cloud computing or SaaS transactions are sourced to state when:

State ¹	Receipts characterized as receipts from services ²	Income-producing activity performed more in-state than out-of-state ³	Income-producing activity performed more out-of-state than in-state ⁴	Software used in state ⁵	Customer has in-state billing address ⁶	Customer has out-of-state billing address ⁷	Other ⁸	Consider whether prewritten or custom ⁹
Virginia ⁷³	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No ⁷⁴
West Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Wisconsin	Yes	No	No	Yes ⁷⁵	No	No	No	No

⁷³ VA: Cloud computing or SaaS transactions are treated as sales other than tangible personal property under Va. Code §58.1-416. Cf. P.D. 12-36 (finding nexus created by taxpayer engaged in providing services to its customers through the Internet). Such transactions are deemed Virginia transactions if, based on cost of performance, the greater proportion of income-producing activity is performed in Virginia. See 23 VAC 10-120-230 and P.D. 16-135.

⁷⁴ VA: See P.D. 94-181 and P.D. 95-236.

⁷⁵ WI: Gross receipts from services are in this state if the purchaser receives the benefit of the service in this state. If the service relates to real property that is located in this state, tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state, the service is provided to an individual who is physically present in this state at the time that the service is received, or the service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state, then the purchaser is considered to have received the benefit of the service in this state.

Sourcing Receipts: Banks and Financial Service Companies

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Formula ⁶	Financial institutions tax imposed instead of corporate income tax ⁷
Alabama ⁸	No	Yes	No	Yes	Yes	Yes
Alaska	No	Yes	No	Yes	Yes	No
Arizona	Yes	No	No	No	No	No
Arkansas	No	No	Yes ⁹	Yes	Yes	No
California	Yes ¹⁰	Yes ¹¹	No ¹²	Yes ¹³	Yes ¹⁴	Yes
Colorado ¹⁵	No	Yes	Yes	Yes	Yes	No
Connecticut	No	Yes	No Response	Yes ¹⁶	No	No
Delaware ¹⁷	No	Yes	No Response	No	No	No Response
District of Columbia ¹⁸	No	Yes	No	Yes	No	No
Florida	No	Yes	Not Applicable	Yes ¹⁹	No	No ²⁰

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² An out-of-state bank or financial services company must source receipts to your state based on costs of performance.

³ An out-of-state bank or financial services company must source receipts to your state based on the **location of the market**.

⁴ An out-of-state bank or financial services company must source receipts to your state based on a method other than costs of performance or the market.

⁵ Does your state provide special rules for sourcing the receipts of a bank or financial services company?

⁶ Does your state follow the *Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions*, or a substantially similar statute or regulation?

⁷ Does your state impose a financial institutions tax on banks and financial services companies instead of the corporate income tax?

⁸ AL: See Alabama **Rule 810-9-1-.05** for the allocation and apportionment provisions applicable to financial institutions. **Amendments adopted by the MTC in 2015 will go into effect for tax years beginning 2017 (returns due in 2017).**

⁹ AR: See MTC Model Statute.

¹⁰ CA: See Regulation §25137-4.2 for details of the method. Sales due to services may be assigned based upon market if the sale results in one of the delineated revenue types set forth in Regulation §25137-4.2(c). However, if the sales due to services are not assigned under any other provision in Regulation §25137-4.2(c), they are assigned based upon costs of performance per Regulation §25137-4.2(c)(3)(K). Additionally, sales of intangibles which are not assigned under any other provision in Regulation §25137-4.2(c) may be assignable based upon costs of performance per Regulation §25137-4.2(c)(3)(M).

¹¹ CA: *Id.*

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CA: *Id.*

¹⁵ CO: See MTC Financial Institution regulation as amended.

¹⁶ CT: See Conn. Gen. Stat. §12-218b.

¹⁷ DE: Banks and Financial Services Companies should inquire with the Bank Commissioner for further requirements.

¹⁸ DC: See 9 DCMR 129.

¹⁹ FL: See **Rule 12C-1.0155(3), F.A.C.**

²⁰ FL: A franchise tax based on income is imposed.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Formula ⁶	Financial institutions tax imposed instead of corporate income tax ⁷
Georgia	No	Yes	No Response	No	No	No Response ²¹
Hawaii ²²	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²³	No Response	Yes	Not Applicable	No Response	Yes	No
Illinois	No	Yes	No	No Response ²⁴	No	No
Indiana ²⁵	No	Yes	No	Yes	Yes	Yes
Iowa	No	Yes	Not Applicable	Yes ²⁶	No	Yes ²⁷
Kansas ²⁸	Yes	Yes	No Response	Yes	Yes	Yes
Kentucky	No ²⁹	No ³⁰	Yes ³¹	Yes ³²	No	Yes
Louisiana	No	Yes	No	No	No	No
Maine	No ³³	Yes ³⁴	No ³⁵	Yes ³⁶	No	Yes
Maryland	No	Yes	No	Yes ³⁷	No	No ³⁸
Massachusetts	No Response	Yes ³⁹	No Response	Yes ⁴⁰	No Response	Yes

²¹ GA: In addition to income taxes, a financial institutions tax is imposed. However, the financial institutions tax is allowed as a dollar for dollar tax credit against the State income tax liability of the depository financial institution for the calendar or fiscal year during which the taxes are paid.

²² HI: In lieu of Hawaii's income tax and general excise tax, the income of banks and financial services companies are subject to the Franchise tax under Chapter 241, Hawaii Revised Statutes. Sourcing is based on Hawaii income tax law (sections 235-21 to 235-39, Hawaii Revised Statute).

²³ ID: Per IDAPA 35.01.01.582, Idaho incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions." Receipts are sourced to the state where property is located or used if lease income or interest income from loans secured by real property, state where borrower located for interest from loans not secured by real property, billing address of card holder for receipts from credit card receivables, commercial domicile of the merchant for receipts from merchant discounts, etc.

²⁴ IL: See IITA Section 304(c).

²⁵ IN: IC 6-3-2-2.2 and IC 6-5.5-4 provide for apportioning receipts, depending on the entity.

²⁶ IA: Iowa Administrative Rule 701-59.28 provides more detail on how income should be sourced for financial institutions, and rule 701-54.6(3) provides detail on how financial organizations source income to Iowa. Both use a market approach.

²⁷ IA: Iowa imposed a franchise tax on financial institutions, which is based on federal taxable income. This is set forth in Iowa Code sections 422.60 through 422.66. Financial service companies are subject to the Iowa corporation income tax. Financial institutions are defined in section 422.61(1).

²⁸ KS: Receipts from services is cost of performance; all others are market-based.

²⁹ KY: Banks are not subject to corporation income tax.

³⁰ KY: *Id.*

³¹ KY: The sales factor is a fraction, the numerator of which is the receipts derived from loans or other sources negotiated through offices located in Kentucky, and the denominator of which shall be total business receipts.

³² KY: 103 KAR 16:150 provides regulatory law for apportionment and allocation of financial organizations and loan companies.

³³ ME: Not applicable to banks because generally banks are subject to the Maine franchise tax (based on net income per books and assets) rather than Maine corporate income tax.

³⁴ ME: *Id.*

³⁵ ME: *Id.*

³⁶ ME: *Id.*

³⁷ MD: Banks are allowed to source intangibles based on their actual source rather than the average of property and payroll factors.

³⁸ MD: See §§ 10-102, 10-104(3), and 8-202(a) of the Tax-General Article, Annotated Code of Maryland.

³⁹ MA: Location of debtor or property.

⁴⁰ MA: See GL c. 63, s. 2A.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Formula ⁶	Financial institutions tax imposed instead of corporate income tax ⁷
Michigan	No	Yes ⁴¹	No	Yes ⁴²	No ⁴³	Yes ⁴⁴
Minnesota	No	Yes	No	Yes ⁴⁵	Yes	No
Mississippi ⁴⁶	No	Yes	Not Applicable	Yes	Yes	No
Missouri	No	Yes	Not Applicable	No	No	No
Montana	Depends	Depends	Depends	No	No	No
Nebraska	No	No	Yes	No	No	Yes
New Hampshire ⁴⁷	No	Yes	No Response	Yes	Yes	No
New Jersey	No	Yes ⁴⁸	Yes ⁴⁹	Yes ⁵⁰	No	No
New Mexico	No	Yes	Not Applicable	Yes	No	No
New York City	No Response	No Response	No Response	Yes	No	No⁵¹
North Carolina	No	Yes ⁵²	No	No	No	No
North Dakota	No Response ⁵³	No Response ⁵⁴	Not Applicable	Yes ⁵⁵	No Response ⁵⁶	No
Oklahoma ⁵⁷	No Response ⁵⁸	No Response ⁵⁹	No Response ⁶⁰	No Response ⁶¹	No Response ⁶²	Yes
Oregon	No	No	Yes ⁶³	Yes ⁶⁴	Yes ⁶⁵	No

⁴¹ MI: See MCL 206.659 for specific rules governing the sourcing of gross business for financial institutions.

⁴² MI: See MCL 206.659.

⁴³ MI: Michigan imposes a net equity tax on financial institutions, not an income tax. Apportionment is done using the gross business factor.

⁴⁴ MI: Michigan terms Part II of its Income Tax Act of 1967 the Corporate Income Tax (CIT). The CIT is comprised of three components: a corporate income tax, a gross direct premiums tax, and a franchise tax. The gross direct premiums tax applies only to insurance companies, and the franchise tax applies only to financial institutions. A "financial institution" is not subject to the corporate income tax. See MCL 206.611(5).

⁴⁵ MN: Special provisions for attributing receipts of financial institutions are provided in Minn. Stat. section 290.191, subd. 6.

⁴⁶ MS: See Miss. Code Ann. §27-7-24.

⁴⁷ NH: N.H. Admin. Rules, Rev 304.10 **requires adjustments to the apportionment factors for financial institutions.**

⁴⁸ NJ: See N.J.A.C. 18:7-8.10 and 8.12.

⁴⁹ NJ: *Id.*

⁵⁰ NJ: *Id.*

⁵¹ **NYC: A 9% rate applies to financial corporations under the business corporation tax. And the Financial Corporation Tax still applies to banks that are S corporations.**

⁵² NC: Receipts from intangibles are sourced to the location of the payor. See NCGS 105-130.4(I)(3)(b).

⁵³ ND: Receipts from services for which the income producing activity is in more than one state are assigned based on the direct costs of performance. Other receipts are assigned based on market.

⁵⁴ ND: *Id.*

⁵⁵ ND: [State follows the Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions, or a substantially similar statute or regulation].

⁵⁶ ND: In July 2015, the MTC adopted revisions to the apportionment provisions for financial institutions. ND has not adopted those July 2015 revisions. The ND apportionment regulations are substantially similar to the MTC regulations that existed prior to July 2015.

⁵⁷ OK: See 68 O.S. §2358 generally.

⁵⁸ OK: Policy not yet developed.

⁵⁹ OK: *Id.*

⁶⁰ OK: *Id.*

⁶¹ OK: *Id.*

⁶² OK: *Id.*

⁶³ OR: Receipts from financials are sourced per OAR 150-314.280-(N) and methods vary depending on type.

⁶⁴ OR: *Id.*

⁶⁵ OR: *Id.*

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Formula ⁶	Financial institutions tax imposed instead of corporate income tax ⁷
Pennsylvania ⁶⁶	No Response	No Response	Yes	Yes	No	Yes
Rhode Island	No	Yes	No	Yes	No	Yes
Tennessee	Not Applicable ⁶⁷	Not Applicable ⁶⁸	Yes	Yes	Yes	No
Texas	No	No	Yes ⁶⁹	Yes ⁷⁰	No	No
Utah	No	Yes	No	Yes	Yes	No
Vermont ⁷¹	No	No Response	Yes	No	No	Yes
Virginia	Yes	No	No	Yes ⁷²	No	Yes ⁷³
West Virginia	No	Yes	No	No	Yes	No
Wisconsin	No	No	Yes ⁷⁴	Yes ⁷⁵	No ⁷⁶	No

⁶⁶ PA: Banks are subject to a bank shares tax imposed on the taxable value of their shares. *See* 72 P.S. § 7701 *et seq.* The taxable value of their shares is based upon their federal reports of condition. Mutual Thrift Institutions are subject to a tax on net income determined in accordance with generally accepted accounting principles. *See* 72 P.S. § 8501 *et seq.* The respective capital stock value and net income is apportioned to Pennsylvania using deposits, receipts and payroll factors. Before the costs of performance can be determined, the income producing activity must first be identified. Depending on the facts and circumstances, the income producing activity may be limited to the state where the benefit was received. Only the costs of performing the income producing activity are used to determine the sourcing of receipts.

⁶⁷ TN: Tenn. Code Ann. § 67-4-2013(b) sets forth the sourcing requirements for a financial institution's various types of receipts. Generally, sourcing of a financial institution's receipts is market-based, but the market is not always determined by the location of the customer or debtor.

⁶⁸ TN: *Id.*

⁶⁹ TX: Sourcing of revenue received by banks is based on standard apportionment rules, except that pursuant to Tax Rule 3.591(e)(8)(E), a banking corporation may exclude from its Texas gross receipts interest that is earned on federal funds and interest that is earned on securities that are sold under an agreement to repurchase and that are held in a correspondent bank that is domiciled in Texas, but the banking corporation must include the interest in its gross receipts everywhere.

⁷⁰ TX: *Id.*

⁷¹ **VT: Receipts earned within Vermont are apportionable to Vermont. Business receipts are not considered to have been earned in Vermont solely by reason of the fact that they were payable in Vermont or were received in Vermont.**

⁷² VA: Financial corporations apportion Virginia taxable income, less allocable dividends, on a one-factor formula based on cost of performance in Virginia over cost of performance everywhere. *See* Va. Code § 58.1-418(A); 23 VAC 10-120-250(A).

⁷³ VA: Pursuant to Va. Code § 58.1-401, state and national banks, banking associations, and trust companies are exempt from the Virginia Corporate Income Tax to the extent they are subject to the Bank Franchise Tax imposed pursuant to Va. Code § 58.41-1200 *et seq.*

⁷⁴ WI: S. Tax 2.49 and 2.495, Wis. Adm. Code, provides sourcing details for banks and financial service companies.

⁷⁵ WI: *See* s. Tax 2.49 and 2.495 Wis. Adm. Code.

⁷⁶ WI: However, many items are similar. *See* s. Tax 2.49, Wis. Adm. Code.

Sourcing Receipts: Construction Contractors

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Long-term construction projects located in-state ⁷	Long-term construction projects located both in and out-of-state ⁸
Alabama	No	No	Yes ⁹	Yes ¹⁰	Yes	Yes	Depends
Alaska	No	Yes	No	Yes ¹¹	Yes	Yes	Yes
Arizona	Yes	No	No	No	No	Yes	Yes
Arkansas ¹²	No	No	Yes ¹³	Yes	Yes	Yes	Yes
California	No ¹⁴	Yes	No	Yes ¹⁵	Yes	Yes	Yes
Colorado	No	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut	No	Yes¹⁶	No	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹	No Response ²⁰
Delaware	Yes	No	No	No	No	Yes	Yes ²¹
District of Columbia	No	Yes	No	No	No	Yes	Yes
Florida	No	Yes	Not Applicable	Yes²²	No	Yes	Depends
Georgia	No	Yes	No Response	No	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² A long-term construction contractor must source receipts to your state based on costs of performance.

³ A long-term construction contractor must source receipts to your state based on the **location of the market**.

⁴ A long-term construction contractor must source receipts to your state based on a method other than costs of performance or the market.

⁵ Does your state provide special rules for sourcing the receipts of a long-term construction contractor?

⁶ Does your state follow the *Multistate Tax Compact Special Industry Rules for Construction Contractors* in Reg. IV.18.(d), or a substantially similar statute or regulation?

⁷ Are receipts from long-term construction projects sourced to your state when the project is located in your state?

⁸ Are receipts from long-term construction projects sourced to your state when the project is located both in your state and outside your state?

⁹ **AL: MTC Special Apportionment Rule is applied. See Alabama Rule 810-27-1-.18.02.**

¹⁰ **AL: MTC Special Apportionment Rule applied. See AL Rule 810-27-1-.18.02.**

¹¹ AK: See 15 AAC 19.1300 - .1390.

¹² AR: See Arkansas Regulation 1.26-51-718(d).

¹³ AR: See MTC Model Regulation.

¹⁴ CA: Regulation §25137-2 prescribes rules to be used to apportion the income of a multistate construction contractor when the contractor receives income under a long term contract. The gross receipts attributable to California are based on a ratio of costs in and out of California, in accordance with the accounting method the taxpayer chose under IRC §451 and Treas. Reg. §1.451.

¹⁵ CA: *Id.*

¹⁶ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

¹⁷ CT: *Id.*

¹⁸ CT: *Id.*

¹⁹ CT: *Id.*

²⁰ CT: *Id.*

²¹ DE: Cost of Performance, % based.

²² **FL: See Rule 12C-1.0155(1)(e), F.A.C.**

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Long-term construction projects located in-state ⁷	Long-term construction projects located both in and out-of-state ⁸
Hawaii ²³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁴	No Response	No Response	No Response	Yes	Yes	Yes	No Response
Illinois	No	Yes	No	No	No	Yes	Yes
Indiana	No	Yes	No	No	Yes	Yes	Yes
Iowa	No	Yes	Not Applicable	Yes ²⁵	No	Yes	Yes ²⁶
Kansas	Yes	No	No	No	No	Yes	Yes
Kentucky	Yes	No	No	No	No	Yes	Yes
Louisiana	No Response ²⁷	No Response ²⁸	No Response ²⁹	No Response ³⁰	No Response ³¹	No Response	No Response
Maine	No	Yes ³²	No	No	No	Yes	Yes ³³
Maryland	No	No	Yes ³⁴	No	No	Yes	Yes ³⁵
Massachusetts	Depends	Depends	Depends	No	No	Depends	Depends
Michigan	No	Yes	No	No	No	Yes	Yes ³⁶
Minnesota	No	Yes	No	No	No	Yes	No Response ³⁷
Mississippi ³⁸	No	No	Yes	Yes	No	Yes	Yes
Missouri	Yes	No	Not Applicable	No	Yes	Yes	Yes
Montana	No	No	Yes	Yes	Yes	Yes	Yes
Nebraska	No	Yes	No	No	No	Yes ³⁹	Yes ⁴⁰
New Hampshire	Yes	No	No	No	No Response	Yes	Depends
New Jersey	Yes	No	No	No	No	Yes	Yes

²³ HI: Income from a long-term construction contractor that is taxable both in this state and in one or more other states shall allocate and apportion net income as provided in HRS sections 235-22 to 235-39.

²⁴ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01.a., MTC Reg. IV (d).

²⁵ IA: Rule 701-54.6(4) provides for the apportionment for construction contractors.

²⁶ IA: Iowa receipts from the portion of the contract located in Iowa are sourced to Iowa.

²⁷ LA: Net income from construction and other similar services is directly allocated to the state in which the work is done.

²⁸ LA: *Id.*

²⁹ LA: *Id.*

³⁰ LA: *Id.*

³¹ LA: *Id.*

³² ME: Maine views market sourcing as the location of where the service is performed.

³³ ME: The sale is sourced proportionately.

³⁴ MD: Construction receipts relating to the construction or improvement of real property are sourced to the location of the property. See COMAR 03.04.03.08D(3).

³⁵ MD: Construction receipts relating to the construction or improvement of real property are sourced to the location of the property pursuant to COMAR 03.04.03.08D(3).

³⁶ MI: Sales of services would be sourced to Michigan based on where the recipient receives the benefit. If the recipient receives all of the services in Michigan, all receipts are included in the numerator. If the recipient receives benefit both in Michigan and another state, receipts are included in the numerator in proportion to the extent that the recipient receives benefits in Michigan. See MCL 206.665(2)(a).

³⁷ MN: Receipts would be pro rata according to the portion of the construction projects attributed to the state.

³⁸ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.02 - The net business income of taxpayers engaged in the business of contracting shall be accounted for and assigned directly to this state for each contract performed within this state.

³⁹ NE: Receipts would be sourced to Nebraska because the projects are fully or partially located in Nebraska, irrespective of the time frame of the project.

⁴⁰ NE: *Id.*

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Long-term construction projects located in-state ⁷	Long-term construction projects located both in and out-of-state ⁸
New Mexico ⁴¹	No	Yes	Yes	Yes	No	Yes	Yes
New York City	Depends⁴²	Depends⁴³	Depends⁴⁴	No Response	No	Yes	Yes
North Carolina	No	No	Yes ⁴⁵	No	No	Yes ⁴⁶	Yes ⁴⁷
North Dakota	Yes	No	No	No	No	Yes	Yes
Oklahoma ⁴⁸	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	No	Yes	No	Yes ⁴⁹	Yes	Yes	Yes ⁵⁰
Pennsylvania	No	Yes	No	No	No	Yes	Depends
Rhode Island	No	Yes	No	No	No	Yes	Yes
Tennessee ⁵¹	Yes	Not Applicable	Not Applicable	No	No	Yes ⁵²	Yes ⁵³
Texas	No	No	Yes ⁵⁴	No	No	No Response ⁵⁵	No Response ⁵⁶
Utah	No	Yes	No	Yes	Yes	Yes	Yes
Vermont	No	No	Yes⁵⁷	No	No	Yes	Depends
Virginia	Yes	No	Yes ⁵⁸	Yes ⁵⁹	No	Yes ⁶⁰	Yes ⁶¹
West Virginia	Yes	No	No	No	Yes	Yes	Yes
Wisconsin	No	Yes	No	No	No	Yes	Yes

⁴¹ NM: The state adopted UDITPA rules apply. See Regulation 3.5.19.12 NMAC.

⁴² NYC: Depends on type of tax.

⁴³ NYC: *Id.*

⁴⁴ NYC: *Id.*

⁴⁵ NC: In North Carolina, receipts from the performance of a service are sourced to the location (situs) of where the service (income producing activity) is performed. See NCGS 105-130.4(I)(3)(c).

⁴⁶ NC: *Id.*

⁴⁷ NC: *Id.*

⁴⁸ OK: Policy not yet developed. See 68 O.S. §2358 generally.

⁴⁹ OR: See OAR 150-314-615-(F).

⁵⁰ OR: *Id.*

⁵¹ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

⁵² TN: Yes, if cost of performance is greater than 50%.

⁵³ TN: *Id.*

⁵⁴ TX: Receipts from the construction of real property are apportioned to where the service is performed. See Rule 3.591(e)(26).

⁵⁵ TX: *Id.*

⁵⁶ TX: *Id.*

⁵⁷ VT: Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.

⁵⁸ VA: Construction corporations electing to report income on the completed contract basis must apportion income in the ratio that business in Virginia bears to total business. See Va. Code §58.1-419(A). Construction corporations not reporting under the completed contract method must determine Virginia taxable income by using the statutory apportionment formula. See Va. Code §58.1-419(B); 23 VAC 10-120-260(C). If a portion of a construction corporation's income is reported under the completed contract method and a portion is reported under a percentage of completion method or some other accounting method, the applicable apportionment formula is determined by the method used to report a majority of the total business, as measured by gross revenue, conducted by the taxpayer for the taxable year. If, however, no one method is used to report a majority of the taxpayer's total business, the general apportionment formula must be used. See 23 VAC 10-120-260(D).

⁵⁹ VA: *Id.*

⁶⁰ VA: *Id.*

⁶¹ VA: *Id.*

Sourcing Receipts: Telecommunications and Ancillary Service Providers

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Sales of ancillary services used by customer in-state ⁷	Sales of telecommunications or ancillary services sold as part of a bundled transaction ⁸
Alabama	No	Depends	Yes ⁹	Yes ¹⁰	Yes	Yes	Depends
Alaska	Yes	No	No	No	No	No Response ¹¹	No Response ¹²
Arizona	Yes	No	No	No	No	Yes	Yes
Arkansas	No	No	Yes	No	No	Yes	Yes
California	No	Yes	No	Yes ¹³	Yes ¹⁴	Yes	Depends ¹⁵
Colorado	No	Yes	No	Yes	Yes	No Response	No Response
Connecticut	No	Yes¹⁶	No	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹	No Response ²⁰
Delaware	Yes	No	No	No	No	Yes	Yes
District of Columbia	No	Yes	Not Applicable	No	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² A telecommunications and ancillary service provider must source receipts to your state based on costs of performance.

³ A telecommunications and ancillary service provider must source receipts to your state based on the **location of the market**.

⁴ A telecommunications and ancillary service provider must source receipts to your state based on a method other than costs of performance or the market.

⁵ Does your state provide special rules for sourcing the receipts of a telecommunications and ancillary service provider?

⁶ Does your state follow the *Multistate Tax Compact Special Industry Rules for Telecommunications and Ancillary Services* in Reg. IV.18.(i), or a substantially similar statute or regulation?

⁷ Are receipts from sales of ancillary services sourced to your state when the ancillary services are primarily used by the customer in your state?

⁸ Are receipts from sales of telecommunications or ancillary services sourced to your state when the services are sold as part of a bundled transaction?

⁹ **AL: MTC Special Apportionment Rule applied. See AL Rule 810-27-1-.18.07**

¹⁰ **AL: Id.**

¹¹ AK: Alaska has no position at this time.

¹² AK: *Id.*

¹³ CA: 18 CCR §§25137-8.1 & -8.2 prescribe the rules for apportioning the income of multistate television networks and film producers.

¹⁴ CA: *Id.*

¹⁵ CA: Depending on the state where the benefits of the service was received, or where the good was shipped.

¹⁶ **CT: Effective for income years beginning on or after January 1, 2016, companies are required to source receipts from intangibles using market-based sourcing. "Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state." See Conn. Gen. Stat. §12-218(b)(4). The Connecticut Department of Revenue Services is preparing guidance regarding market-based sourcing and will post this guidance to its website as soon as it becomes available.**

¹⁷ **CT: Id.**

¹⁸ **CT: Id.**

¹⁹ **CT: Id.**

²⁰ **CT: Id.**

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Sales of ancillary services used by customer in-state ⁷	Sales of telecommunications or ancillary services sold as part of a bundled transaction ⁸
Florida	No	Yes	Not Applicable	Yes ²¹	No	Depends ²²	Depends ²³
Georgia	No	Yes	No Response	No	No	No Response	No Response
Hawaii ²⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Idaho ²⁵	Yes	Not Applicable	Not Applicable ²⁶	No	No	No Response	No Response
Illinois	No	Yes	No ²⁷	Yes	No	Yes	Yes
Indiana ²⁸	Yes	No	No	No	No	No	No
Iowa	No	Yes	Not Applicable	Yes ²⁹	No	Yes	Yes ³⁰
Kansas ³¹	No	No	Yes ³²	Yes	No	Yes	Yes
Kentucky	Yes	No	No	No	No	Yes	Yes
Louisiana	No	Yes	No	Yes ³³	No	Yes	Yes
Maine	No	Yes	No	No	No	Yes	Yes
Maryland	No	Yes	No	No	No	Yes ³⁴	Yes ³⁵
Massachusetts	No	No	Yes	Yes	Yes	Depends ³⁶	Depends ³⁷
Michigan	No	Yes	No	Yes ³⁸	No	Yes ³⁹	Yes ⁴⁰
Minnesota	No	Yes	No	No	No	Yes	Yes

²¹ FL: See Rule 12C-1.0155(2)(g), F.A.C.

²² FL: See Rule 12C-1.0155(2)(g), F.A.C.

²³ FL: *Id.*

²⁴ HI: Net income from the sale of telecommunications and ancillary services by a person that is taxable both in this state and in one or more other states are allocated and apportioned as provided in HRS sections 235-22 to 235-39.

²⁵ ID: Based on the costs of performance.

²⁶ ID: See 63-3027(r). Sales other than tangible personal property are in this state if; (2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

²⁷ IL: See 304(a)(3)(B-5).

²⁸ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

²⁹ IA: Rule 701-54.7(4) provides for the apportionment for telecommunication companies.

³⁰ IA: To the extent the benefit of the services are received in Iowa, the sales are sourced to Iowa.

³¹ KS: "Telecommunications company" means any business entity of unitary group of entities whose primary business activity is the transmission of communications in the form of voice, data, signals or facsimile communications by wire or fiber optic cable.

³² KS: Special single factor is used for "telecommunications company" where the numerator is the information carrying capacity of wire and fiber optic cable available for use in this state and the denominator is the information carrying capacity of wire and fiber optic cable available for use everywhere during the tax year.

³³ LA: See LAC 61:I.1134(D)(2).

³⁴ MD: If the receipts are derived from customers within MD as determined in §D of COMAR 03.04.03.08.

³⁵ MD: *Id.*

³⁶ MA: See 830 CMR 63.38.11(5)(e), referencing "customer channel termination point."

³⁷ MA: *Id.*

³⁸ MI: See MCL 206.665(13) through (19).

³⁹ MI: Receipts from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service is in this state based on the location of the purchaser. See MCL 206.665(18).

⁴⁰ MI: *Id.*

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Sales of ancillary services used by customer in-state ⁷	Sales of telecommunications or ancillary services sold as part of a bundled transaction ⁸
Mississippi	No	Yes ⁴¹	Not Applicable	No	No	Yes	Yes
Missouri	Yes	No	Not Applicable	No	No	Yes	Yes
Montana	No	No	Yes	Yes	Yes	Depends	Depends
Nebraska	Yes	No	No	No	No	No ⁴²	No ⁴³
New Hampshire	Yes	No	No	No	No Response	No Response	No Response
New Jersey	No	Yes ⁴⁴	No	Yes ⁴⁵	No	No	No
New Mexico	No	Yes	No	No	No	Yes	Yes
New York City⁴⁶	No	Yes	No Response	Yes	No	Yes	Yes
North Carolina	No	Yes	No	Yes ⁴⁷	No	Yes	Yes
North Dakota	Yes	No	No	No	No	Depends ⁴⁸	Depends ⁴⁹
Oklahoma ⁵⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	No	Yes ⁵¹	No ⁵²	Depends ⁵³	Depends ⁵⁴
Pennsylvania	No	Yes	No⁵⁵	No	No	Yes	Yes
Rhode Island	No	Yes	No	No	No	Yes	Yes
Tennessee ⁵⁶	Yes	No	No	No	No	No	No

⁴¹ MS: See Title 35, Part III, Supart 08, Chapter 06, Section 402.05 - Business income of public utilities shall be apportioned to this state in the ratio that gross operating revenues within Mississippi bears to the total gross operating revenues everywhere.

⁴² NE: Nebraska retains cost of performance for telecommunication companies for sales of other than tangible personal property. See Neb. Rev. Stat. §77-2734.14(4).

⁴³ NE: *Id.*

⁴⁴ NJ: See N.J.A.C. 18:7-8.10(a) Example 2.

⁴⁵ NJ: *Id.*

⁴⁶ **NYC: Telecommunications companies are subject to the NYC Utility Tax. However, companies that are not subject to the supervision of the Public Service Commission are taxable under the corporate taxes as well as the Unincorporated Business Tax depending on their entity type, with an exclusion in proportion to the receipts taxed under the Utility Tax.**

⁴⁷ NC: N.C. Gen. Stat. 105-134(n) states that all apportionable income of a telephone company be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue.

⁴⁸ ND: Depends on the direct costs of performance of the income producing activity.

⁴⁹ ND: *Id.*

⁵⁰ OK: Policy not yet developed. See 68 O.S. §2358 generally.

⁵¹ OR: ORS 314.280(3) allows optional election of 50% sales / 25% property / 25% payroll.

⁵² OR: *Id.*

⁵³ OR: *Id.*

⁵⁴ OR: *Id.*

⁵⁵ PA: Where the service is delivered.

⁵⁶ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special Rules ⁵	Multistate Tax Compact Special Industry Rules ⁶	Sales of ancillary services used by customer in-state ⁷	Sales of telecommunications or ancillary services sold as part of a bundled transaction ⁸
Texas	No	No	Yes ⁵⁷	No Response ⁵⁸	No	No Response ⁵⁹	No Response ⁶⁰
Utah	No	Yes	No	Yes	No	Yes	Yes
Vermont	No	No	Yes⁶¹	No	No	Yes	Yes
Virginia	Yes	No	No	No ⁶²	No	Not Applicable ⁶³	Yes
West Virginia	No	Yes	No	Yes ⁶⁴	Yes	Yes	No
Wisconsin	No	Yes	No	Yes ⁶⁵	No ⁶⁶	Yes	Yes

⁵⁷ TX: Receipts from telephone calls that both originate and terminate in Texas are Texas receipts. Rule 3.591(e)(30)(A). Receipts from telecommunication services, other than telephone calls, are Texas receipts if the services are performed in Texas. See 3.591(e)(30)(C).

⁵⁸ TX: *Id.*

⁵⁹ TX: *Id.*

⁶⁰ TX: *Id.*

⁶¹ VT: Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.

⁶² VA: Telecommunications companies organized as corporations are subject to the minimum tax imposed by Va. Code §58.1-400.1 in lieu of the Virginia Corporate Income Tax if the amount of the corporate income tax is less than the minimum tax.

⁶³ VA: Because Virginia uses the cost of performance method of sourcing sales other than the sale of tangible personal property, it is not relevant where customers use such services.

⁶⁴ WV: See W.Va. Code §11-15B-19.

⁶⁵ WI: See sec. Tax 2.502, Wis. Adm. Code.

⁶⁶ WI: However, many items are similar.

Sourcing Receipts: Trucking Companies (Part 1 of 2)

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
Alabama	No	No	Yes	Yes	MTC Special Apportionment Rule applied. See AL Rule 810-27-1-18.06.
Alaska	No	No	No	Yes	15 AAC 19.1210 sources sales based on a terminal days ratio.
Arizona	Yes	No	No ⁶	No	
Arkansas ⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	
California	No	No	Yes	Yes	See 18 CCR §25137-11.
Colorado	No	No	Yes	No	
Connecticut	No	No	Yes	No	Motor carriers apportion their income using a factor calculated by dividing the total miles operated in Connecticut by the total miles operated everywhere. See Conn. Gen. Stat. §12-218(d).
Delaware	Yes	No	No Response	No	Trucking Companies should contact DE Dept of Transportation.
District of Columbia ⁸	No	No	Yes	No Response	
Florida	No	No	No	Yes	Revenue miles. See s. 220.151(2)(a), F.S. See s. 220.151, F.S. and Rule 12C-1.0151, F.A.C.
Georgia	No	No	Yes ⁹	No	
Hawaii ¹⁰	No Response	No Response	No Response	No Response	
Idaho ¹¹	No Response	Not Applicable	Yes	Not Applicable	
Illinois	No	No	Yes	No	See 304(d)(3) and (4).
Indiana	No	No	Yes	No	

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² A trucking company must source receipts to your state based on costs of performance.

³ A trucking company must source receipts to your state based on the **location of the market**.

⁴ A trucking company must source receipts to your state based on the mileage

⁵ A trucking company must source receipts to your state based on a method other than costs of performance or the market.

⁶ AZ: Trucking companies must source receipts based on cost of performance, however revenue miles tend to reflect cost of performance well.

⁷ AR: Arkansas Regulation 5.26-51-718(d) requires bus lines and trucking companies to apportion income to Arkansas based on a mileage factor.

⁸ DC: See 9 DCMR 128.

⁹ GA: See Regulation 560-7-7-.03.

¹⁰ HI: Net income from a trucking company that is taxable both in this state and in one or more other states is allocated and apportioned as provided in HRS sections 235-22 to 235-39.

¹¹ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01.d., MTC Reg. IV 18 (g).

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
Iowa	No	No	Yes	Not Applicable	Rule 54.7(2) provides for the mileage factor for trucking companies. It does not matter if any pickups or deliveries occur in Iowa. Any "pass through" miles are reported to Iowa.
Kansas	No	No	No	Yes	Receipts factor isn't used when business activity is from interstate motor carrier operations. The single factor is the total number of miles operated in this state and the denominator is the total number of miles operated everywhere. When a unitary group of companies consist of both transportation and non-transportation companies, a special apportionment is used to compute Kansas taxable income as described in K.A.R. 92-12-114.
Kentucky	No	No	Yes	Yes	Total operating income shall be multiplied by a fraction the numerator of which is miles operated in Kentucky and the denominator of which is total miles operated. 103 KAR 16:120 provides regulatory law for apportionment and allocation of trucklines, buslines and airlines.
Louisiana	No	No	Yes	Yes	All intrastate transportation revenue, plus a portion of interstate transportation revenue, based on a "unit of transportation" method.
Maine	No	No	Yes	No	
Maryland	No	No	Yes	No	
Massachusetts ¹²	No Response	No Response	No Response	Yes	
Michigan	No	No	Yes ¹³	No	
Minnesota	No	Yes	No	No	
Mississippi	No	No	Yes	Not Applicable	See Title 35, Part III, Supart 08, Chapter 06, Section 402.04 - Business Income of Motor Carriers.
Missouri	No	No	Yes	Yes	
Montana	No	No	Yes	Yes	Applies to freight, mail and express shipments.
Nebraska	No	No	Yes	No	
New Hampshire ¹⁴	No	No	Yes	Yes	See N.H. Admin. Rules, Rev 304.11.
New Jersey	No	No	Yes ¹⁵	No ¹⁶	

¹² MA: See 830 CMR 63.38.3(4): "The sales factor of a motor carrier is determined according to the rules generally applicable to corporations under the Apportionment of Income regulation."

¹³ MI: Michigan apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. See MCL 206.655(11)-(12).

¹⁴ NH: See N.H. Admin. Rules, Rev 304.11.

¹⁵ NJ: See N.J.A.C. 18:7-8.10c4ii.

¹⁶ NJ: *Id.*

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
New Mexico ¹⁷	No	No	Yes	No	
New York City	No	No	Yes	No Response	
North Carolina	No	No	Yes	No	
North Dakota	No ¹⁸	No	Yes	No	
Oklahoma ¹⁹	No Response	No Response	No Response	No Response	
Oregon	No	No	Yes	No	
Pennsylvania	No	No	No Response ²⁰	Yes	
Rhode Island	No	Yes	No	No	
Tennessee ²¹	Not Applicable	Not Applicable	Not Applicable	Yes	See Tenn. Code Ann. §67-4-2013, sourcing receipts of motor carriers are computed by taking the average of two ratios.
Texas	No	No	No	Yes	Revenues derived from the transportation of goods in intrastate commerce within Texas are Texas receipts. These receipts are reported by (1) the inclusion of revenues that are derived from the transportation of goods in intrastate commerce within Texas; or (2) the multiplication of total transportation receipts by total mileage in the transportation of goods that move in intrastate commerce within Texas divided by total mileage everywhere in the transportation of goods . See Rule 3.591(e)(32).
Utah	No	No	Yes	Yes	Revenues from the intrastate hauling of freight, mail and express are in this state. Interstate revenues from these activities are attributed to this state based on the ratio of mobile property miles in this state to mobile property miles everywhere. (MTC Trucking Rule Provisions).
Vermont	No	No	No	Yes	Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.
Virginia	No	No	Yes	Yes	Vehicle Miles In-State: Total Vehicle Miles Everywhere.

¹⁷ NM: The state adopted UDITPA rules apply. See Regulation 3.5.19.15 NMAC.

¹⁸ ND: As measured by the special apportionment provisions referred to in [the question regarding special rules for sourcing the receipts of a trucking company].

¹⁹ OK: Policy not yet developed. See 68 O.S. §2358 generally.

²⁰ PA: Revenue miles in PA over revenue miles everywhere.

²¹ TN: See Tenn. Code Ann. §67-4-2013(a)(2). The appropriate ratio shall be the average of the following two ratios: 1) the gross receipts from operations on business beginning and ending in this state without entering or passing through any other state as compared with the entire gross receipts from such operations in and outside the state, and 2) the ratio of the total franchise miles or odometer miles (if there are no franchise miles) inside the state as compared to the total franchise or odometer miles in and outside of the state.

State¹	Cost of performance²	Market-based³	Mileage⁴	Other⁵	If other, please explain
West Virginia	No	Yes ²²	No ²³	No	
Wisconsin ²⁴	No	No	No	No	

²² WV: See W.Va. Code § 11-15B-15.

²³ WV: *Id.*

²⁴ WI: Under sec. Tax 2.47, Wis. Adm. Code, interstate motor carriers apportion their income to WI based on two factors: receipts and ton miles. Receipts are included in the numerator (in Wisconsin) if the carriage is first acquired in Wisconsin.

Sourcing Receipts: Trucking Companies (Part 2 of 2)

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from hauling freight, mail and express shipments sourced to state when:		
			Shipment originates and terminates in-state ⁴	Shipment passes through, into or out of state ⁵	Miles traveled threshold ⁶
Alabama	Yes ⁷	Yes	Yes	No Response ⁸	No
Alaska ⁹	Yes	No	Yes	Yes	Yes
Arizona	No	No	Yes	Yes	No
Arkansas ¹⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
California	Yes ¹¹	Yes	Yes	Yes	Yes ¹²
Colorado	Yes	Yes	Yes	No Response ¹³	No Response
Connecticut ¹⁴	Yes	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state provide special rules for sourcing the receipts of a trucking company?

³ Does your state follow the *Multistate Tax Compact Special Industry Rules for Trucking Companies* in Reg. IV.18.(g), or a substantially similar statute or regulation?

⁴ Are receipts from hauling freight, mail and express shipments sourced to your state when the shipment originates and terminates in your state?

⁵ Are receipts from hauling freight, mail and express shipments sourced to your state when the shipment passes through, into or out of your state?

⁶ Are receipts from hauling freight, mail and express shipments sourced to your state when the trucking company does not own or rent any real or personal property in your state, other than mobile property; make any pick-ups or deliveries in your state; or exceed a certain threshold of mobile property miles traveled in your state?

⁷ **AL: MTC Special Apportionment Rule applied. See AL Rule 810-27-1-18.06.**

⁸ AL: Determined by mileage.

⁹ AK: 15 AAC 19.1200 - .1290 provides special rules for land transportation carriers (i.e. trucking companies).

¹⁰ AR: Arkansas Regulation 5.26-51-718(d) requires bus lines and trucking companies to apportion income to Arkansas based on a mileage factor.

¹¹ CA: See 18 CCR §25137-11.

¹² CA: De minimis nexus standard. Notwithstanding any provision contained herein, this regulation shall not apply to require the apportionment of income to this state if the trucking company during the course of the income year neither: (1) owns nor rents any real or personal property in this state, except mobile property which is operated within and without this state during the income year; nor (2) makes any pick-ups or deliveries within this state; nor (3) travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income year does not exceed 3 percent of the total mobile property miles traveled in all states by the trucking company during that period; nor (4) makes more than 12 trips into this state.

¹³ CO: In-state miles.

¹⁴ CT: Motor carriers apportion their income using a factor calculated by dividing the total miles operated in Connecticut by the total miles operated everywhere. See Conn. Gen. Stat. §12-218(d).

State ¹	Receipts from hauling freight, mail and express shipments sourced to state when:				
	Special rules ²	Multistate Tax Compact special industry rules ³	Shipment originates and terminates in-state ⁴	Shipment passes through, into or out of state ⁵	Miles traveled threshold ⁶
Delaware	No	No	Yes	No	No
District of Columbia ¹⁵	Yes	No	Yes	No	No
Florida	Yes	No	Yes ¹⁶	Yes ¹⁷	Not Applicable ¹⁸
Georgia	Yes ¹⁹	No	No Response ²⁰	No Response ²¹	No Response ²²
Hawaii ²³	No	No	No Response	No Response	No Response
Idaho ²⁴	No Response	Yes	Yes	Yes	Yes
Illinois	Yes ²⁵	No	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes	No
Iowa	Yes	No	Yes	Yes	Yes
Kansas	No	No	No	No	No
Kentucky	Yes	No	Yes	Yes	No
Louisiana	Yes ²⁶	No	Yes	No	No
Maine	No	Yes ²⁷	Yes	Depends	No
Maryland	No	No	Yes	Yes	Yes
Massachusetts ²⁸	Yes	No	Depends	Depends	Depends
Michigan	Yes ²⁹	No	Yes ³⁰	Yes ³¹	Yes ³²
Minnesota	No	No	Yes	No	Yes ³³

¹⁵ DC: See 9 DCMR 128.

¹⁶ FL: Florida has not established a threshold of mobile property miles.

¹⁷ FL: *Id.*

¹⁸ FL: *Id.*

¹⁹ GA: See Regulation 560-7-7-.03.

²⁰ GA: *Id.*

²¹ GA: *Id.*

²² GA: *Id.*

²³ HI: Net income from a trucking company that is taxable both in this state and in one or more other states is allocated and apportioned as provided in HRS sections 235-22 to 235-39.

²⁴ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01.d., MTC Reg. IV 18 (g).

²⁵ IL: Receipts from interstate trips are allocated to Illinois according to miles traveled.

²⁶ LA: See LAC 61:I.1134(D)(1).

²⁷ ME: Generally follow when applicable, not in Rule or in law.

²⁸ MA: See 830 CMR 63.38.3(4): "The sales factor of a motor carrier is determined according to the rules generally applicable to corporations under the Apportionment of Income regulation."

²⁹ MI: Special rules for sourcing the receipts of transportation services are contained in MCL 206.655(11)-(12).

³⁰ MI: Michigan apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. See MCL 206.655(11)-(12).

³¹ MI: *Id.*

³² MI: If nexus is established under MCL 206.621 and RAB 2014-5, an out-of-state trucking company apportions transportation services based on the ratio of revenue miles in-state to revenue miles everywhere. See MCL 206.655(11)-(12) and CIT FAQ Nexus & Apportionment 12. There is no miles threshold.

³³ MN: Receipts from the performance of services are attributed to the state where the services are received. See Minn. Stat. section 290.191, subd 5(j).

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from hauling freight, mail and express shipments sourced to state when:		
			Shipment originates and terminates in-state ⁴	Shipment passes through, into or out of state ⁵	Miles traveled threshold ⁶
Mississippi	Yes	No	Yes	No	No ³⁴
Missouri	Yes ³⁵	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes	Yes ³⁶
Nebraska	Yes	Yes	Yes	Yes	Yes ³⁷
New Hampshire ³⁸	Yes	Yes	Yes	No Response	No Response
New Jersey	Yes	No	Yes	Yes	No
New Mexico ³⁹	Yes	No	Yes	Yes	No
New York City	Yes⁴⁰	No	Yes	No Response	No Response
North Carolina	Yes ⁴¹	No	Yes	No	No
North Dakota	Yes	Yes	Yes	Yes ⁴²	Yes
Oklahoma ⁴³	No Response	No Response	No Response ⁴⁴	No Response ⁴⁵	No Response ⁴⁶
Oregon ⁴⁷	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes ⁴⁸	No	No	No	No
Rhode Island	No	No	Yes	Yes	No
Tennessee ⁴⁹	Yes	No	Yes	Yes	No
Texas	No Response ⁵⁰	No	Yes	No	No
Utah	Yes	Yes	Yes	Yes	No

³⁴ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.04 - If a motor carrier has any activity other than simply passing through this state, then it is “doing business” in this state and income shall be apportioned to this state in the ratio that Mississippi revenue ton miles to the total revenue ton miles of the taxpayer during the tax period.

³⁵ MO: Follow the Multistate Tax Compact Special Industry Rules for Trucking Companies in Reg. IV. 18. (g).

³⁶ MT:... travels more than 25,000 mobile property miles in Montana; provided that the total mobile property miles traveled within Montana during the tax year does not exceed three percent of the total mobile property miles traveled in all states by the trucking company during the tax year; nor makes more than 12 trips into Montana during the tax year.

³⁷ NE: The thresholds are generally not to exceed 25,000 mobile property miles traveled within this state or make more than 12 trips into this state. See Nebraska Revenue Ruling 24-08-1.

³⁸ NH: See N.H. Admin. Rules, Rev 304.11.

³⁹ NM: The state adopted UDITPA rules apply. See Regulation 3.5.19.15 NMAC.

⁴⁰ NYC: Receipts from trucking may be allocated to New York City on the percentage that mileage within New York City bears to total mileage within and without New York City, or on the percentage that the time operated within New York City bears to the total time operated within and without New York City. See 19 Rules of the City of New York Sec. 11-65(d).

⁴¹ NC: For trucking companies, income is apportioned to this state by using a “vehicle miles” formula. Only the vehicle miles in North Carolina are included in the numerator of the sales factor. See NCGS 105-130.4(o).

⁴² ND: Yes, to the extent the activity is not de minimis according to the trucking regulations (12 trips, 25,000 miles, 3%).

⁴³ OK: See 68 O.S. §2358 generally.

⁴⁴ OK: Policy not yet developed.

⁴⁵ OK: *Id.*

⁴⁶ OK: *Id.*

⁴⁷ OR: Revenue miles OAR 150-314-280-(J).

⁴⁸ PA: Revenue miles in PA over revenue miles everywhere.

⁴⁹ TN: See Tenn. Code Ann. §67-4-2013(a)(2). The appropriate ratio shall be the average of the following two ratios: 1) the gross receipts from operations on business beginning and ending in this state without entering or passing through any other state as compared with the entire gross receipts from such operations in and outside the state, and 2) the ratio of the total franchise miles or odometer miles (if there are no franchise miles) inside the state as compared to the total franchise or odometer miles in and outside of the state.

⁵⁰ TX: Revenues derived from the transportation of goods in intrastate commerce within Texas are Texas receipts. These receipts are reported by (1) the inclusion of revenues that are derived from the transportation of goods in intrastate commerce within Texas

**Receipts from hauling freight, mail and
express shipments sourced to state when:**

State¹	Special rules²	Multistate Tax Compact special industry rules³	Shipment originates and terminates in-state⁴	Shipment passes through, into or out of state⁵	Miles traveled threshold⁶
Vermont	No	No	Depends	Depends	No
Virginia	Yes ⁵¹	No	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	Yes	Yes	No	No
Wisconsin ⁵²	Yes	No	Yes	Yes	No

or (2) the multiplication of total transportation receipts by total mileage in the transportation of goods that move in intrastate commerce within Texas divided by total mileage everywhere **in the transportation of goods**. See Rule 3.591(e)(32).

⁵¹ VA: In Virginia, motor carriers of property or passengers must apportion their net income by use of the ratio of miles traveled in-state to total vehicle miles everywhere. See Va. Code §58.1-417; 23 VAC 10-120-240.

⁵² WI: Under sec. Tax 2.47, Wis. Adm. Code, interstate motor carriers apportion their income to WI based on two factors: receipts and ton miles. Receipts are included in the numerator (in Wisconsin) if the carriage is first acquired in Wisconsin.

Sourcing Receipts: Airlines (Part 1 of 2)

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
Alabama	No	No	No	Yes	MTC Special Apportionment Rule applied. See AL Rule 810-27-1-.18.01.
Alaska	No	No	No	Yes	See 15 AAC 19.1100 - .1190 special rules for airlines.
Arizona ⁶	No	No	No	Yes	Airlines source receipts based on revenue miles.
Arkansas ⁷	No Response	No Response	No Response	Yes	See AR Reg 4.26-51-718(d).
California	No	No	No	Yes	
Colorado ⁸	No Response	No Response	No Response	Yes	See Special Regulation 1A.
Connecticut	No	No	No	Yes	Air carriers apportion their net income based upon the average of three equally-weighted factors: 1) number of in state arrivals and departures divided by everywhere arrivals and departures; 2) in state revenue tons divided by everywhere revenue tons; and 3) in state originating revenue divided by everywhere originating revenue. See Conn. Gen. Stat. §12-244.
Delaware	No	No Response	No Response	No Response	
District of Columbia	No	Yes	No	No	
Florida	No	No	No	Yes	Revenue miles - See s. 220.151(2)(c), Fla. Stat.
Georgia ⁹	No Response	No Response	No Response	Yes	See O.C.G.A. §48-7-31(d)(2.1).
Hawaii	No Response	No Response	No Response	No Response	Income for air carriers is apportioned according to HAR section 18-235-38-06.02, which uses revenue tons, originating revenue, and flight operating hours.

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² An airline must source receipts to your state based on costs of performance.

³ An airline must source receipts to your state based on the **location of the market**.

⁴ An airline must source receipts to your state based on the mileage

⁵ An airline must source receipts to your state based on something other than costs of performance, the market or mileage.

⁶ AZ: See Arizona Revised Statutes 43-1139. Allocation of business income. B. All business income of a taxpayer engaged in air commerce shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the revenue aircraft miles flown within this state for flights beginning or ending in this state and the denominator of which is the total revenue aircraft miles flown by the taxpayer's aircraft everywhere. This subsection applies to each taxpayer, including a combined group filing a combined return or an affiliated group electing to file a consolidated return under section 43-947, if fifty per cent or more of that taxpayer's gross income is derived from air commerce. For the purposes of this subsection: 1. "Air commerce" means transporting persons or property for hire by aircraft in interstate, intrastate or international transportation. 2. "Revenue aircraft miles flown" has the same meaning prescribed by the United States department of transportation uniform system of accounts and reports for large certificated air carriers (see 14 Code of Federal Regulations part 241).

⁷ AR: See Arkansas Regulation 4.26-51-718(d).

⁸ CO: See Special Regulation 1A.

⁹ GA: See O.C.G.A. §48-7-31(d)(2.1).

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
Idaho ¹⁰	No Response	Not Applicable	Yes	Not Applicable	
Illinois	No	No	Yes	No	
Indiana	No	No	Yes	No	
Iowa	No	No	Yes	Not Applicable	
Kansas ¹¹	No	No	No	Yes	Kansas adopted the Specialized Industry Rules for Airlines offered in the Multistate Tax Compact in Reg.IV.18.(e).
Kentucky ¹²	No	No	No ¹³	Yes	
Louisiana	No Response	No Response	No Response	No Response	
Maine	No	Yes	No	No	
Maryland ¹⁴	No	No	No	Yes	
Massachusetts ¹⁵	No Response	Yes	No Response	No Response	
Michigan	No	No	Yes ¹⁶	No	
Minnesota ¹⁷	No	Yes	No	No	
Mississippi ¹⁸	No	No	Yes	Not Applicable	
Missouri	No	No	Yes ¹⁹	Yes	See Code of State Regulation 12 CSR 10-2.210 (2) E.
Montana	No	No	No	Yes	
Nebraska	No	No	No	Yes	See Regulation 24-341.
New Hampshire ²⁰	No	No	No	Yes	See N.H. Admin. Rules, Rev 304.11.
New Jersey	No	No	Yes	No	
New Mexico ²¹	No	No	No	Yes	Adopted UDITPA rules apply. See Regulation 3.5.19.14 NMAC.
New York City	No Response	No Response	No Response	Yes	For information on sourcing receipts from aviation services please refer to Administrative Code Section 11-654.2(7)(b).

¹⁰ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01b, MTC Reg. IV 18e.

¹¹ KS: Apportionment rules for airlines in Kansas are explained in K.A.R. 92-12-111.

¹² KY: See KRS 141.121 and 103 KAR 16:120. "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241.

¹³ KY: See KRS 141.121 and 103 KAR 16:120.

¹⁴ MD: Passenger revenue is computed by multiplying passenger revenue everywhere by the ratio of the number of originating passenger revenue everywhere by the ratio of the number of originating passengers in Maryland compared to the number or originating passengers everywhere. Freight revenue is computed by multiplying freight revenue everywhere by the ratio of originating tons in Maryland compared to originating tons everywhere.

¹⁵ MA: Market based sourcing rules apply to receipts of airlines. See 830 CMR 63.38.1(9)(d).

¹⁶ MI: Generally, receipts will be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere. Revenue mile means the transportation for consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. Receipts attributable to a person whose business activity consists both of property and of individuals shall be proportioned separately. See MCL 206.655(11)-(12).

¹⁷ MN: Minnesota Rule 8017.6000 was invalidated when Minn. Stat. section 290.0191, Subd. 5(j) was amended to attribute receipts for performance of services must be attributed to the state where the services are received.

¹⁸ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.03(3) - Business Income of Airlines.

¹⁹ MO: See Statute 143.451.4 RSMo.

²⁰ NH: See N.H. Admin. Rules, Rev 304.11.

²¹ NM: Adopted UDITPA rules apply. See Regulation 3.5.19.14 NMAC.

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	If other, please explain
North Carolina ²²	No	No	No	Yes	
North Dakota	No	No	No	Yes	
Oklahoma ²³	No Response	No Response	No Response	No Response	
Oregon	No	No	No	Yes	Departure ratio.
Pennsylvania	No	No	Yes ²⁴	No	
Rhode Island	No	Yes	No	No	
Tennessee ²⁵	Not Applicable	Not Applicable	Not Applicable	Yes	See Tenn. Code Ann. §67-4-2013(a)(5), sourcing receipts of air carriers are computed by taking the average of two ratios.
Texas	No	No	No	Yes	Revenues derived from the transportation of goods or passengers in intrastate commerce within Texas are Texas receipts. These receipts are reported by (1) the inclusion of revenues that are derived from the transportation of goods or passengers in intrastate commerce within Texas; or (2) the multiplication of total transportation receipts by total mileage in the transportation of goods and passengers that move in intrastate commerce within Texas divided by total mileage everywhere in the transportation of goods and passengers . See Rule 3.591(e)(32).
Utah ²⁶	No	No	Yes	No	
Vermont	No	No	No	Yes	Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.
Virginia	Yes	No	No	Yes	To the extent that an airline sells tangible personal property, its sales are in the Commonwealth if such property is received in the Commonwealth by the purchaser pursuant to Va. Code §58.1-415. Otherwise, such sales are sourced under the cost of performance rules in Va. Code §58.1-416.
West Virginia	No	Yes	No	No	
Wisconsin	No	No	No	Yes	See s. Tax 2.46 Wis. Adm. Code. Apportionment is computed using the arithmetical average of three ratios: 1.) Arrivals and departures, 2.) Revenue tons, and 3.) Originating revenue.

²² NC: N.C. Gen. Stat. 105-130.4(s) states that: "All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds."

²³ OK: Policy not yet developed. See 68 O.S. §2358 generally.

²⁴ PA: Revenue miles in the state to revenue miles everywhere.

²⁵ TN: See Tenn. Code Ann. §67-4-2013(a)(5). The appropriate ratio shall be the average of the following two ratios: 1) the originating revenue in the state as compared with the entire originating revenue in and outside the state, and 2) the ratio of the total air miles flown in the state to the total air miles flown in and outside the state.

²⁶ UT: The factors of an airline Statutorily are apportioned to Utah based on revenue ton miles traveled over Utah for flights landing in or taking off from Utah (by aircraft type) i.e. revenue ton miles, divided by total revenue ton miles everywhere.

Sourcing Receipts: Airlines (Part 2 of 2)

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from the air transportation of passengers, cargo, freight or mail are sourced to your state when:		
			Flight arrives in state ⁴	Flight departs from state ⁵	Flight passes through state ⁶
Alabama	Yes ⁷	Yes	No Response	No Response	No Response
Alaska	Yes ⁸	Yes	No ⁹	Yes ¹⁰	No ¹¹
Arizona ¹²	Yes	Yes	Yes	Yes	No
Arkansas ¹³	Yes	Yes	Yes	Yes	Yes
California	Yes ¹⁴	No ¹⁵	Yes¹⁶	Yes¹⁷	Yes ¹⁸
Colorado ¹⁹	Yes	No Response ²⁰	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state provide special rules for sourcing the receipts of an airline?

³ Does your state follow the *Multistate Tax Compact Special Industry Rules for Airlines* in Reg. IV.18.(e), or a substantially similar statute or regulation?

⁴ Are receipts from the air transportation of passengers, cargo, freight or mail sourced to your state when the flight arrives in your state.

⁵ Are receipts from the air transportation of passengers, cargo, freight or mail sourced to your state when the flight departs from your state.

⁶ Are receipts from the air transportation of passengers, cargo, freight or mail sourced to your state when the flight passes through your state

⁷ **AL: MTC Special Apportionment Rule applied. See AL Rule 810-27-1-.18.01.**

⁸ AK: See 15 AAC 19.1100 - .1190 special rules for airlines.

⁹ AK: Apportionment based on ground time, which is presumed one hour for each departure in absence of any evidence to the contrary.

¹⁰ AK: *Id.*

¹¹ AK: *Id.*

¹² AZ: See Arizona Revised Statutes 43-1139. Allocation of business income. B. All business income of a taxpayer engaged in air commerce shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the revenue aircraft miles flown within this state for flights beginning or ending in this state and the denominator of which is the total revenue aircraft miles flown by the taxpayer's aircraft everywhere. This subsection applies to each taxpayer, including a combined group filing a combined return or an affiliated group electing to file a consolidated return under section 43-947, if fifty per cent or more of that taxpayer's gross income is derived from air commerce. For the purposes of this subsection: 1. "Air commerce" means transporting persons or property for hire by aircraft in interstate, intrastate or international transportation. 2. "Revenue aircraft miles flown" has the same meaning prescribed by the United States department of transportation uniform system of accounts and reports for large certificated air carriers (see 14 Code of Federal Regulations part 241).

¹³ AR: See Arkansas Regulation 4.26-51-718(d).

¹⁴ CA: See CCR §25137-7.

¹⁵ CA: Under the MTC rules for interstate air carriers, the computation of the factor numerators is based on the ratio of in-state aircraft departures, weighted by the cost and value of aircraft, to the total departures everywhere, similarly weighted.

¹⁶ CA: See CCR §25137-7(b)(3)(A)(i) and (ii). **Air time in state vs. everywhere is weighted at 80%, and ratio of arrivals/departures in state vs. everywhere is weighted at 20%.**

¹⁷ CA: *Id.*

¹⁸ CA: *Id.*

¹⁹ CO: See Special Regulation 1A.

²⁰ CO: In part.

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from the air transportation of passengers, cargo, freight or mail are sourced to your state when:		
			Flight arrives in state ⁴	Flight departs from state ⁵	Flight passes through state ⁶
Connecticut	Yes	No Response ²¹	No Response ²²	No Response ²³	No Response ²⁴
Delaware	No Response	No	Yes	Yes	No
District of Columbia	No	No	Not Applicable ²⁵	Not Applicable ²⁶	Not Applicable ²⁷
Florida	Yes	No	Yes ²⁸	Yes ²⁹	Yes ³⁰
Georgia ³¹	Yes	No	No Response	No Response	No Response
Hawaii	Yes	No	No Response ³²	No Response ³³	No Response ³⁴
Idaho ³⁵	No Response	Yes	Yes	Yes	Yes
Illinois	Yes	No	Yes	Yes	No
Indiana	Yes ³⁶	No	Yes	Yes	Yes
Iowa	Yes ³⁷	No	Yes	Yes	Yes
Kansas ³⁸	Yes	Yes	No	Yes	No
Kentucky ³⁹	Yes	No	No	No	Yes
Louisiana	No Response	No Response	No Response	No Response	No Response
Maine	No	No	No ⁴⁰	No ⁴¹	No ⁴²
Maryland ⁴³	Yes	No	No	Yes	No

²¹ CT: Air carriers apportion their net income based upon the average of three equally-weighted factors: 1) number of in-state arrivals and departures divided by everywhere arrivals and departures; 2) in-state revenue ton miles divided by everywhere revenue ton miles; and 3) in-state originating revenue divided by everywhere originating revenue. See Conn. Gen. Stat. § 12-244.

²² CT: *Id.*

²³ CT: *Id.*

²⁴ CT: *Id.*

²⁵ DC: District does not have airport located in District.

²⁶ DC: *Id.*

²⁷ DC: *Id.*

²⁸ FL: See section 220.151(2)(c), **F.S.**, and **Rule 12C-1.0151(2), F.A.C.**

²⁹ FL: *Id.*

³⁰ FL: *Id.*

³¹ GA: See **O.C.G.A. § 48-7-31(d)(2.1)**.

³² HI: Income for air carriers is apportioned according to HAR section 18-235-38-06.02, which uses revenue tons, originating revenue, and flight operating hours.

³³ HI: *Id.*

³⁴ HI: *Id.*

³⁵ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01b, MTC Reg. IV 18e.

³⁶ IN: 45 IAC 3.1-1-63 provides for apportionment based on mileage flown in Indiana.

³⁷ IA: Rule 54.7(2) provides for the mileage factor for airlines. The total mileage traveled in Iowa is reported to Iowa.

³⁸ KS: Apportionment rules for airlines in Kansas are explained in K.A.R. 92-12-111.

³⁹ KY: See KRS 141.121 and 103 KAR 16:120. "Revenue passenger miles" means miles calculated in accordance with 14 C.F.R. Part 241.

⁴⁰ ME: Customer's billing address.

⁴¹ ME: *Id.*

⁴² ME: *Id.*

⁴³ MD: Passenger revenue is computed by multiplying passenger revenue everywhere by the ratio of the number of originating passenger revenue everywhere by the ratio of the number of originating passengers in Maryland compared to the number or originating passengers everywhere. Freight revenue is computed by multiplying freight revenue everywhere by the ratio of originating tons in Maryland compared to originating tons everywhere.

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from the air transportation of passengers, cargo, freight or mail are sourced to your state when:		
			Flight arrives in state ⁴	Flight departs from state ⁵	Flight passes through state ⁶
Massachusetts ⁴⁴	No	No Response	No Response	No Response	No Response
Michigan	Yes ⁴⁵	No	Yes ⁴⁶	Yes ⁴⁷	Yes ⁴⁸
Minnesota ⁴⁹	No	No	Yes	No	No
Mississippi ⁵⁰	Yes	No	Yes	Yes	No
Missouri	Yes ⁵¹	Yes	No	Yes	No
Montana	Yes	Yes	No Response	No Response	No Response
Nebraska ⁵²	Yes	No	No	Yes	No
New Hampshire ⁵³	Yes	Yes	No Response	Yes	No Response
New Jersey	Yes	No	Yes	Yes	Yes ⁵⁴
New Mexico ⁵⁵	Yes	Yes	No	Yes	No
New York City	Yes	No	Yes	Yes	No
North Carolina ⁵⁶	Yes	No	Yes	Yes	No
North Dakota	Yes	Yes	Yes	Yes	No
Oklahoma ⁵⁷	No Response	No Response	No Response	No Response	No Response
Oregon	Yes ⁵⁸	Yes	No	Yes	No
Pennsylvania	Yes ⁵⁹	Yes ⁶⁰	No	No	No
Rhode Island	Yes ⁶¹	Yes	No	Yes	No

⁴⁴ MA: Market based sourcing rules apply to receipts of airlines. See 830 CMR 63.38.1(9)(d).

⁴⁵ MI: Generally, receipts will be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere. Revenue mile means the transportation for consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. Receipts attributable to a person whose business activity consists both of property and of individuals shall be proportioned separately. See MCL 206.655(11)-(12).

⁴⁶ MI: *Id.*

⁴⁷ MI: *Id.*

⁴⁸ MI: *Id.*

⁴⁹ MN: Minnesota Rule 8017.6000 was invalidated when Minn. Stat. section 290.0191, Subd. 5(j) was amended to attribute receipts for performance of services must be attributed to the state where the services are received.

⁵⁰ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.03(3) - Business Income of Airlines.

⁵¹ MO: See Code of State Regulation 12 CSR 10-2.210 (2) E.

⁵² NE: See Regulation 24-341.

⁵³ NH: See N.H. Admin. Rules, Rev. 304.07.

⁵⁴ NJ: Only if the airline has nexus with New Jersey.

⁵⁵ NM: Adopted UDITPA rules apply. See Regulation 3.5.19.14 NMAC.

⁵⁶ NC: N.C. Gen. Stat. 105-130.4(s) states that: "All apportionable income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds."

⁵⁷ OK: Policy not yet developed. See 68 O.S. §2358 generally.

⁵⁸ OR: See OAR 150-314.280-(I).

⁵⁹ PA: Revenue miles in the state to revenue miles everywhere.

⁶⁰ PA: *Id.*

⁶¹ RI: See RI Regulation CT 15-04.

State ¹	Special rules ²	Multistate Tax Compact special industry rules ³	Receipts from the air transportation of passengers, cargo, freight or mail are sourced to your state when:		
			Flight arrives in state ⁴	Flight departs from state ⁵	Flight passes through state ⁶
Tennessee ⁶²	Yes	No	Yes	Yes	No
Texas	No Response ⁶³	No	No	No	No
Utah ⁶⁴	Yes	No	Yes	Yes	No
Vermont	No	No	Depends	Depends	Depends
Virginia	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	Yes	Yes	No
Wisconsin	Yes ⁶⁵	No	Yes	Yes	No

⁶² TN: See Tenn. Code Ann. §67-4-2013(a)(5). The appropriate ratio shall be the average of the following two ratios: 1) the originating revenue in the state as compared with the entire originating revenue in and outside the state, and 2) the ratio of the total air miles flown in the state to the total air miles flown in and outside the state.

⁶³ TX: Revenues derived from the transportation of goods or passengers in intrastate commerce within Texas are Texas receipts. These receipts are reported by (1) the inclusion of revenues that are derived from the transportation of goods or passengers in intrastate commerce within Texas; or (2) the multiplication of total transportation receipts by total mileage in the transportation of goods and passengers that move in intrastate commerce within Texas divided by total mileage everywhere **in the transportation of goods and passengers**. See Rule 3.591(e)(32).

⁶⁴ UT: The factors of an airline Statutorily are apportioned to Utah based on revenue ton miles traveled over Utah for flights landing in or taking off from Utah (by aircraft type) i.e. revenue ton miles, divided by total revenue ton miles everywhere.

⁶⁵ WI: See s. Tax 2.46 Wis. Adm. Code. Apportionment is computed using the arithmetical average of three ratios: 1.) Arrivals and departures, 2.) Revenue tons, and 3.) Originating revenue.

Sourcing Receipts: Film, Television and Radio Broadcasting

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special rules ⁵	Multi-state Tax Compact special industry rules ⁶	Receipts sourced to your state when:		
						TV, film or radio programming in release to or by TV or radio station in state ⁷	Film programming in release to or by a cable TV system with subscribers in state ⁸	Audience in state ⁹
Alabama ¹⁰	No	No	Yes ¹¹	Yes	Yes	No Response	No Response	No Response
Alaska ¹²	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Arizona	Yes	Yes ¹³	No	No	No	Yes	Yes	Yes
Arkansas	No Response	No Response	No Response	No Response	No	No Response	Yes	No Response
California	No	No	Yes ¹⁴	Yes ¹⁵	No	Yes	Yes	Yes
Colorado ¹⁶	No Response	No Response	Yes ¹⁷	No Response	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² A broadcasting company must source receipts to your state based on costs of performance.

³ A broadcasting company must source receipts to your state based on the **location of the market**.

⁴ A broadcasting company must source receipts to your state based on something other than costs of performance or the market.

⁵ Does your state provide special rules for sourcing the receipts of a broadcasting company?

⁶ Does your state follow the *Multistate Tax Compact Special Industry Rules for Television and Radio Broadcasting* in Reg. IV.18.(h), or a substantially similar statute or regulation?

⁷ Are receipts received by a broadcasting company sourced to your state when the receipts are from TV, film or radio programming in release to or by TV or radio stations in your state?

⁸ Are receipts received by a broadcasting company sourced to your state when the receipts are from film programming in release to or by a cable TV system with subscribers in state?

⁹ Are receipts received by a broadcasting company sourced to your state when the broadcasting company's audience is in your state?

¹⁰ AL: Special apportionment rule: 810-27-1-.18.

¹¹ **AL: MTC Special Apportionment Rule applied. See AL Rule 810-27-1-.18.05.**

¹² AK: Alaska has no position at this time.

¹³ AZ: Yes, if multistate service provider under 43-1147.

¹⁴ CA: CCR §25137-8.2, regarding business entities producing or distributing motion picture, film, or television through broadcast or telecast, provides that the apportionment formula will be computed pursuant to Sections 25128 through 25137. This means that the formula is single sales factor pursuant to section 25128.7. The sales factor numerator includes all gross receipts derived by the taxpayer from sources within this state, including: ■ advertising revenue from films released to theatres and television stations located in this state; ■ advertising revenue from films in release to or by a television network for network telecast shall be attributed to this state in the ratio that the audience for such network stations located in California bears to the total audience for all such network stations everywhere; ■ advertising revenue from films in release to subscription television telecasters, attributed to this state in the ratio that the subscribers for such telecaster located in California bears to the total subscribers of such telecaster everywhere; ■ sales and rentals, licensing or other disposition of video cassettes and discs or any other format or medium intended for personal use, applying Regulations 25135 and 25136. CCR §25137(a) identifies "radio" as a certain industry for which the foregoing regulations in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors, but CCR §25137-8.2 does not specifically include radio broadcasting companies.

¹⁵ CA: See CCR §25137-8.2.

¹⁶ CO: See Special Regulation 3A.

¹⁷ CO: See Special Regulation 3A.

Receipts sourced to your state when:

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special rules ⁵	Multi-state Tax Compact special industry rules ⁶	TV, film or radio programming in release to or by TV or radio station in state ⁷	Film programming in release to or by a cable TV system with subscribers in state ⁸	Audience in state ⁹
Connecticut	No	No	Yes ¹⁸	Yes	Not Applicable	No Response ¹⁹	No Response ²⁰	No Response ²¹
Delaware	Yes	No Response	No Response	No	No	No	No	No
District of Columbia	No	Yes	Not Applicable	No	No	Yes	Yes	Yes
Florida	No	No	Yes ²²	Yes ²³	No	No	No	Yes
Georgia ²⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	No Response	No Response	No Response ²⁵	Yes	Yes	No Response ²⁶	No Response ²⁷	No Response ²⁸
Idaho ²⁹	No Response	Not Applicable	Not Applicable	No Response	Yes	Yes	Yes	Yes
Illinois ³⁰	No	Yes	No	Yes	No Response	Yes	Yes	Yes
Indiana ³¹	Yes	No	No	No	No	No	No	No
Iowa	No	Yes	Not Applicable	Yes ³²	No	Yes	Yes	Yes
Kansas	Yes	No	No	No	No	No	No	No
Kentucky	Yes	No	No	No	No	No ³³	No ³⁴	No ³⁵
Louisiana	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Yes	No	No	No	Yes ³⁶	Yes ³⁷	Yes ³⁸
Maryland	No	Yes	Not Applicable	No	No	No	No	Yes

¹⁸ CT: Net income derived from broadcasting is apportioned based upon the percentage of gross receipts received from the audience/subscribers located in state. See Conn. Gen. Stat. § 12-218(k).

¹⁹ CT: Net income derived from broadcasting is apportioned based upon the percentage of gross receipts received from the audience or subscribers, as applicable, located in state. See Conn. Gen. Stat. § 12-218(k).

²⁰ CT: *Id.*

²¹ CT: *Id.*

²² FL: Ratio of audience in Florida to audience everywhere. See Fla. Admin. Code R. 12C-1.0155(2)(i).

²³ FL: See Rule 12C-1.0155(2)(ii), F.A.C.

²⁴ GA: Please see Regulation 560-7-7-.03.

²⁵ HI: Income is allocated according to HAR 18-235-38-06.04 using property, payroll and sales factors.

²⁶ HI: The income is allocated according to HAR 18-235-38-06.04, which uses property, payroll and sales factors.

²⁷ HI: *Id.*

²⁸ HI: *Id.*

²⁹ ID: Idaho has adopted this special industry rule. See IDAPA 35.01.01.580.01e, MTC Reg. IV 18(h).

³⁰ IL: See 35 ILCS 5/304(a)(3)(B-7).

³¹ IN: While Cost of Performance is the default method for sourcing of services, if that method does not fairly reflect a taxpayer's Indiana source income, the Department is authorized to fairly reflect the taxpayer's Indiana source income. However, these answers may change upon further Department review.

³² IA: Iowa Code section 422.33(2)(a)(2)(e) provides for the apportionment of income from broadcasting. Gross receipts from broadcasting are attributable to Iowa in the proportion the customers are located in Iowa. However, all gross receipts from national or local political advertising that is directed exclusively at Iowa are attributable to Iowa.

³³ KY: Receipts received from a broadcasting company are sourced according to KRS 141.120(8).

³⁴ KY: *Id.*

³⁵ KY: *Id.*

³⁶ ME: Depends on the situation.

³⁷ ME: *Id.*

³⁸ ME: *Id.*

State ¹	Receipts sourced to your state when:							
	Cost of performance ²	Market-based ³	Other ⁴	Special rules ⁵	Multi-state Tax Compact special industry rules ⁶	TV, film or radio programming in release to or by TV or radio station in state ⁷	Film programming in release to or by a cable TV system with subscribers in state ⁸	Audience in state ⁹
Massachusetts ³⁹	No Response	No Response	Yes	Yes	No Response	Depends	Depends	Depends
Michigan	No	No ⁴⁰	Yes ⁴¹	Yes	No	Yes ⁴²	Yes ⁴³	Yes ⁴⁴
Minnesota	No	Yes	No	No	No	Yes ⁴⁵	Yes ⁴⁶	Yes ⁴⁷
Mississippi	No	Yes	Not Applicable	No	No	Yes	Yes	No
Missouri	Yes	No	No	No	No	No ⁴⁸	No ⁴⁹	No ⁵⁰
Montana	No	No	Yes	Yes	Yes	No Response	No Response	No Response
Nebraska	Yes	No	No	No	No	No Response ⁵¹	No	No
New Hampshire ⁵²	No	No	Yes	Yes	No Response	No Response	No Response	Yes
New Jersey	No	No	Yes	Yes	No	Yes ⁵³	Yes ⁵⁴	Yes ⁵⁵
New Mexico ⁵⁶	No	No	Yes	Yes	No	Yes	Yes	Yes
New York City⁵⁷	No Response	No Response	Yes	Yes	No	No Response	No Response	No Response
North Carolina	No	No	Yes	No	No	Yes ⁵⁸	Yes ⁵⁹	No ⁶⁰
North Dakota	No	Yes	Yes ⁶¹	Yes	Yes	No	No	Yes
Oklahoma ⁶²	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response

³⁹ MA: See 830 CMR 63.38.11: Apportionment of Income of Telecommunications Industry.

⁴⁰ MI: Media receipts are sourced based on where the benefit is received, which may be determined by the commercial domicile of the customer, or may be determined by the location of the customer and listening audience. See MCL 206.665(20).

⁴¹ MI: See MCL 206.665(20).

⁴² MI: If the station is the customer of the broadcaster and the station's commercial domicile is located in Michigan. See MCL 206.665(20).

⁴³ MI: *Id.*

⁴⁴ MI: If the receipts are for advertising and the customer's commercial domicile is located in Michigan, receipts are sourced to Michigan based on where the customer receives the benefit of the advertising. The customer receives the benefit of the advertising in proportion to the broadcaster's viewing or listening audience in this state bears to its viewing or listening audience everywhere. See MCL 206.665(20).

⁴⁵ MN: Attribution of receipts by a broadcasting company are determined on a case by case basis.

⁴⁶ MN: *Id.*

⁴⁷ MN: *Id.*

⁴⁸ MO: Cost of performance would determine how the receipts are treated.

⁴⁹ MO: *Id.*

⁵⁰ MO: *Id.*

⁵¹ NE: The sourcing of receipts from a broadcast company is determined under Regulation 24-333.03.

⁵² NH: See N.H. Admin. Rules, Rev. 304.09.

⁵³ NJ: See N.J.A.C. 18:7-8.1(a) Example 1.

⁵⁴ NJ: *Id.*

⁵⁵ NJ: *Id.*

⁵⁶ NM: The state adopted UDITPA rules apply. See Regulation 3.5.19.18 NMAC.

⁵⁷ NYC: Advertising receipts are sourced based on audience location.

⁵⁸ NC: Depends on the terms of the agreements for the TV, film, or radio programming.

⁵⁹ NC: *Id.*

⁶⁰ NC: *Id.*

⁶¹ ND: North Dakota Admin. Code 81-03-09-38 applies special apportionment provisions for television and broadcasting.

⁶² OK: Policy not yet developed. See 68 O.S. §2358 generally.

Receipts sourced to your state when:

State ¹	Cost of performance ²	Market-based ³	Other ⁴	Special rules ⁵	Multi-state Tax Compact special industry rules ⁶	TV, film or radio programming in release to or by TV or radio station in state ⁷	Film programming in release to or by a cable TV system with subscribers in state ⁸	Audience in state ⁹
Oregon	No	Yes	No	Yes ⁶³	No	Yes	Yes	No
Pennsylvania	No	Yes	No	No	No	Yes	Yes	Yes
Rhode Island	No	Yes	No	Yes ⁶⁴	No	No	Yes	No
Tennessee ⁶⁵	Yes	No	No	No	No	Yes	No	No
Texas	No	No	Yes ⁶⁶	No	No	No	No	No
Utah	No	Yes	No	No	Yes	Depends ⁶⁷	Depends ⁶⁸	Depends ⁶⁹
Vermont	No	No	Yes⁷⁰	No	Yes	No Response	No Response	No Response
Virginia	Yes	No	Yes ⁷¹	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	Yes	No	No	No	Yes	Yes	No
Wisconsin	No	Yes	No	No	No	Yes ⁷²	Yes ⁷³	Yes ⁷⁴

⁶³ OR: See ORS 314.680 to 314.684.

⁶⁴ RI: Refer to RI Regulation CT 15-04.

⁶⁵ TN: 2015 Tenn. Pub. Acts Ch. 514, §§9, 17 (effective July 1, 2016) passed Apr. 22, 2015, implements market-based sourcing in Tennessee.

⁶⁶ TX: A broadcasting company's receipts from the release of programming are considered receipts from a copyright royalty and are apportioned to Texas when the copyrighted programming is shown in Texas. See Rule 3.591(e)(21)(A)(ii). A broadcasting company's receipts from advertising are apportioned to Texas when the advertising is broadcast or transmitted from a location in Texas, even though some of the audiences are located outside of Texas. See Rule 3.591(e)(22).

⁶⁷ UT: Receipts from services are sourced to Utah if the greater benefit of the service is received in this state. Utah has not adopted a special rule in regard to broadcasting companies.

⁶⁸ UT: *Id.*

⁶⁹ UT: *Id.*

⁷⁰ VT: Receipts for services are apportioned to Vermont if the services are performed in Vermont. If compensation is for services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont.

⁷¹ VA: To the extent that such companies sell tangible personal property, its sales are in the Commonwealth if such property is received in the Commonwealth by the purchaser pursuant to Va. Code §58.1-415. Otherwise, such sales are sourced under the cost of performance rules in Va. Code §58.1-416.

⁷² WI: The receipts are generally sourced to Wisconsin if the benefit of the service is received in Wisconsin or the use of the intangible property is in Wisconsin.

⁷³ WI: *Id.*

⁷⁴ WI: *Id.*

Sourcing Receipts: Oil & Gas Pipelines

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	Special rules ⁶	Receipts from transportation or transmission of oil or gas by pipeline are sourced to state when:	
						Transportation/transmission originates and terminates in state ⁷	Transportation/transmission passes through, into or out of state ⁸
Alabama	No	Yes	No	No	No	Yes	No
Alaska	No	Yes	No	Yes ⁹	Yes ¹⁰	Yes	Not Applicable
Arizona	Yes	No	No	No	No	Yes	Yes
Arkansas ¹¹	No Response	No Response	No Response	Yes	Yes	No Response	No Response
California	No	No	Yes	No	Yes ¹²	No	Yes
Colorado	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Connecticut	No Response	No Response	No Response	No Response	No	No Response	No Response
Delaware	Yes	No Response	No Response	No Response	No	No Response	No Response
District of Columbia	No	Yes	Not Applicable	Not Applicable	No	Yes	No
Florida	No	No	No	Yes¹³	Yes ¹⁴	Yes	Yes
Georgia ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable
Idaho	No	Yes	Not Applicable	Not Applicable	No	Depends	Depends

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² A pipeline company must source receipts to your state based on costs of performance.

³ A pipeline company must source receipts to your state based on the **location of the market**.

⁴ A pipeline company must source receipts to your state based on the mileage

⁵ A pipeline company must source receipts to your state based on something other than costs of performance, the market or mileage.

⁶ Does your state provide special rules for sourcing the receipts of a pipeline company?

⁷ Are receipts from the transportation or transmission of oil or gas by pipeline sourced to your state when the transportation or transmission both originates and terminates in your state?

⁸ Are receipts from the transportation or transmission of oil or gas by pipeline sourced to your state when the transportation or transmission passes through, into or out of your state?

⁹ AK: See AS 43.20.144; 15 AAC 20.410 - .550.

¹⁰ AK: See AS 43.20.144(d).

¹¹ AR: Total Sales within AR plus a proportionate part of system revenue earned in AR determined on basis of total barrel or unit mile in AR to total barrel or unit miles in system.

¹² CA: The sales factor is calculated based on ratio of barrel miles transported within California to total barrel miles.

¹³ FL: Revenue miles - See s. 220.151(2)(b), F.S.

¹⁴ FL: See section 220.151(2)(b), F.S.

¹⁵ GA: Please see Regulation 560-7-7-.03.

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	Special rules ⁶	Receipts from transportation or transmission of oil or gas by pipeline are sourced to state when:	
						Transportation/transmission originates and terminates in state ⁷	Transportation/transmission passes through, into or out of state ⁸
Illinois	No	No	No	Yes ¹⁶	Yes	Yes	Yes
Indiana	No	No	Yes ¹⁷	No	Yes ¹⁸	Yes	Yes
Iowa	No	No	Yes	Not Applicable	Yes ¹⁹	Yes	Yes
Kansas	Yes	No	No	No	No	No	Yes
Kentucky ²⁰	No	No	No	Yes ²¹	Yes	No	No
Louisiana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Yes	No	No	No	Yes	No Response ²²
Maryland	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Massachusetts ²³	No Response	No Response	No Response	Yes	Yes	Depends	Depends
Michigan	No	No	Yes ²⁴	No	Yes ²⁵	Yes	Yes
Minnesota	No	Yes	No	No	No	Yes	No
Mississippi ²⁶	No	No	Yes	Not Applicable	Yes	Yes	Yes
Missouri	Yes ²⁷	Yes ²⁸	Yes ²⁹	No	No	Yes	Yes ³⁰
Montana	No	No	Yes	No	No	No Response	No Response
Nebraska ³¹	No	No	Yes	No	Yes	Yes	Yes
New Hampshire	No	Yes	No	No	No	Yes	Depends
New Jersey	No	Yes	No	No	No	Yes	No

¹⁶ IL: Gross receipts. See Department Regulations 100.3450.

¹⁷ IN: See 45 IAC 3.1-1-63 (barrel miles, cubic foot miles, or other appropriate measures).

¹⁸ IN: *Id.*

¹⁹ IA: Rule 54.7(3) provides for the mileage factor for oil, gasoline, gas, and other pipeline companies. The proportion of Iowa traffic units to total traffic units is attributable to Iowa.

²⁰ KY: See 103 KAR 16:110.

²¹ KY: 103 KAR 16:110, Section 2 states that for gas transmission pipelines, sales means operating revenues are defined by the Federal Energy Regulatory Commission. Sales are assigned under the provisions of KRS 141.120(8)(c). Kentucky operating income for crude oil pipelines is determined as follows: total operating income shall be multiplied by a fraction, the numerator of which is barrel miles in Kentucky and the denominator of which is total barrel miles. A “barrel mile” means one barrel of liquid transported one mile.

²² ME: If the transportation or transmission terminates in the state, the sale is sourced to Maine.

²³ MA: See 830 CMR 63.38.8 Apportionment of Income of Pipeline Companies.

²⁴ MI: Receipts for transportation of oil by pipeline are sourced based on barrel miles and of gas by pipeline based on 1,000 cubic feet miles. See MCL 206.665(11) and (12).

²⁵ MI: See MCL 206.665(11) and (12).

²⁶ MS: See Title 35, Part III, Subpart 08, Chapter 06, Section 402.07.

²⁷ MO: If 3-factor.

²⁸ MO: If optional single sales factor.

²⁹ MO: Under 143.441, RSMo.

³⁰ MO: Depending on method.

³¹ NE: Pipeline company receipts are sourced under Regulation 24-342.

State ¹	Cost of performance ²	Market-based ³	Mileage ⁴	Other ⁵	Special rules ⁶	Receipts from transportation or transmission of oil or gas by pipeline are sourced to state when:	
						Transportation/transmission originates and terminates in state ⁷	Transportation/transmission passes through, into or out of state ⁸
New Mexico ³²	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New York City	No Response	No Response	No Response	No Response ³³	Depends ³⁴	Depends ³⁵	Depends ³⁶
North Carolina	No	Yes ³⁷	No	No	No	Yes ³⁸	No
North Dakota	Yes ³⁹	No	No Response ⁴⁰	No	No	Yes	Yes
Oklahoma ⁴¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	No	Yes ⁴²	No	No	Yes ⁴³	Yes ⁴⁴	No
Pennsylvania	No	No	No	Yes ⁴⁵	Yes	No ⁴⁶	No ⁴⁷
Rhode Island ⁴⁸	No	Yes	No	No	Not Applicable	Not Applicable	Not Applicable
Tennessee ⁴⁹	No	No	No	Yes	Yes	Yes	Yes
Texas	No	No	No	Yes ⁵⁰	No	Yes	No
Utah ⁵¹	No	Yes	No	No	No	Yes	Depends
Vermont ⁵²	No	Yes	No	No	No	Depends	Depends

³² NM: The state cannot provide a definitive position on these items at this time.

³³ **NYC: The sourcing receipts from the transportation or transmission of gas through pipelines is based on transportation units within the city vs. transportation units without the city under the business corporation tax. Please refer to Administrative Code Section 11-654.2(9).**

³⁴ **NYC: Answer depends on tax type.**

³⁵ **NYC: Id.**

³⁶ **NYC: Id.**

³⁷ NC: Oil and gas are treated as tangible personal property. As a result, the receipts are sourced to the numerator of the sales factor when the property is delivered to a customer in North Carolina. See N.C. Gen. Stat. 105-130.4(I)(2).

³⁸ NC: *Id.*

³⁹ ND: Based on the direct cost of performance of the income producing activity of the movement of a unit of property.

⁴⁰ ND: *Id.*

⁴¹ OK: Policy not yet developed. See 68 O.S. 2358 generally.

⁴² OR: For public utilities, sourcing is based on the contractually specified point of physical delivery. For non-public utilities, sourcing is based on the ultimate destination of the oil or gas.

⁴³ OR: Special rule pertaining to public utilities. See OAR 150-314.280-(O).

⁴⁴ OR: Sourcing is based on whether the oil or gas transmission terminates in Oregon. It is not based on the point of origin.

⁴⁵ PA: Revenue barrel miles/revenue cubic feet miles in PA to revenue barrel miles/revenue cubic feet miles everywhere.

⁴⁶ PA: *Id.*

⁴⁷ PA: *Id.*

⁴⁸ RI: Tax under RI General Law 44-13-2 Public Service Corporation Tax.

⁴⁹ TN: See Tenn. Code Ann. §67-4-2013(a)(4). The appropriate ratio shall be the average of the following two ratios: 1) the gross receipts from operations on business beginning and ending inside this state without entering or passing through any other state as compared with its entire gross receipts from such operations inside and outside the state, and 2) the ratio of the pipeline miles owned, operated, or owned and operated inside and outside the state.

⁵⁰ TX: Revenues derived from the transportation of goods in intrastate commerce within Texas are Texas receipts. These receipts are reported by (1) the inclusion of revenues that are derived from the transportation of goods in intrastate commerce within Texas; or (2) the multiplication of total transportation receipts by total mileage in the transportation of goods and passengers that move in intrastate commerce within Texas divided by total mileage everywhere **in the transportation of goods and passengers**. See Rule 3.591(e)(32).

⁵¹ UT: Receipts from services are sourced to Utah if the greater benefit of the service is received in this state.

⁵² **VT: Receipts from sale of tangible personal property sourced to Vermont if property is delivered or shipped to a purchaser who takes possession within this state.**

**Receipts from transportation or
transmission of oil or gas by
pipeline are sourced to state when:**

State ¹	Cost of performance ²	Market- based ³	Mileage ⁴	Other ⁵	Special rules ⁶	Transportation/ transmission originates and terminates in state ⁷	Transportation/ transmission passes through, into or out of state ⁸
Virginia	Yes	No	No	Yes ⁵³	No	Not Applicable	Not Applicable
West Virginia	No	Yes	No	No	No	Yes	No
Wisconsin	No	No	No	Yes ⁵⁴	Yes ⁵⁵	Yes	Yes

⁵³ VA: To the extent that such companies sell tangible personal property, its sales are in the Commonwealth if such property is received in the Commonwealth by the purchaser pursuant to Va. Code §58.1-415. Otherwise, such sales are sourced under the cost of performance rules in Va. Code §58.1-416. See Va. Code §§58.1-400.2 & 58.1-2627.1 and 23 VAC 10-120-90 for special rules regarding Virginia's taxation of pipeline companies.

⁵⁴ WI: See s. Tax 2.48, Wis. Adm. Code. Apportionment is computed using the arithmetical average of three ratios: 1.) Property, 2.) Payroll, and 3.) Traffic unit factor.

⁵⁵ WI: *Id.*

Sourcing Receipts: Alternative Apportionment

State ¹	Written guidance ²	Burden of proof on party seeking to apply alternative apportionment ³	Burden of proof on taxpayer ⁴	Taxpayer's clear and convincing evidence ⁵	Taxpayer's preponderance of the evidence ⁶	State's clear and convincing evidence ⁷	State's preponderance of the evidence ⁸
Alabama	Yes ⁹	No Response	No Response	No Response	No Response	No Response	No Response
Alaska	No	No Response ¹⁰	No Response ¹¹	No Response ¹²	No Response ¹³	Not Applicable	Not Applicable
Arizona ¹⁴	No	Yes	No	Yes	Yes	No	Yes
Arkansas	Yes ¹⁵	No	No	Yes	No	No	Yes
California	Yes ¹⁶	Yes	No	Yes ¹⁷	No ¹⁸	Yes ¹⁹	No ²⁰
Colorado	No	Yes	No	No ²¹	No ²²	No	Yes
Connecticut ²³	Yes	Yes	No	No Response	No Response	No Response	No Response
Delaware ²⁴	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² If your state's alternative apportionment regime has been invoked, does the state have written guidelines on when the state or the taxpayer can use it?

³ Does your state place the burden of proof on the party seeking to apply an alternative apportionment method?

⁴ Does your state place the burden of proof on the taxpayer, without consideration as to which party is seeking to apply an alternative apportionment method?

⁵ To invoke your state's alternative apportionment method, the taxpayer's burden of proof is clear and convincing evidence.

⁶ To invoke your state's alternative apportionment method, the taxpayer's burden of proof is preponderance of the evidence.

⁷ The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is clear and convincing evidence.

⁸ The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is preponderance of the evidence.

⁹ AL: Alabama adopted the MTC model language in our statute which allows alternate apportionment under certain circumstances. See Code of Alabama 1975, Section 40-27-1 Article 4, 18(a) and Alabama **Rule** 810-27-1-4-18.

¹⁰ AK: Alaska has no position at this time.

¹¹ AK: *Id.*

¹² AK: *Id.*

¹³ AK: *Id.*

¹⁴ AZ: The burden of proof is on the party raising the A.R.S. 43-1148 argument.

¹⁵ AR: For financial institutions - see Arkansas Code Ann. §26-51-1401(d). For all other types of corporations - see Arkansas Code Annotated 26-51-718. The burden of proof for Arkansas is whether the Department was arbitrary and capricious in its use of discretionary authority to approve or require alternative apportionment.

¹⁶ CA: See California Code of Regulations, section 25137.

¹⁷ CA: *Microsoft Corp. v. Franchise Tax Board* (Cal. 2006) 139 P.3d 1169 and *Appeal of Fluor Corporation*, 95-SBE-016, Aug. 31, 1995, provide discussion concerning burden of proof with respect to alternative apportionment.

¹⁸ CA: *Id.*

¹⁹ CA: *Id.*

²⁰ CA: *Id.*

²¹ CO: Because alternative apportionment for the taxpayer is discretionary with the executive director, the department must believe that significant distortion exists. Abuse of discretion would be the appropriate standard.

²² CO: *Id.*

²³ CT: See Conn. Gen. Stat. §§12-221a and 12-226a and Conn. Agencies Regs. §§12-221a-1 and 12-226a-1.

²⁴ DE: See Del. Code 30 Chapter 19 section 1903(c). If, in the discretion of the Secretary of Finance, the application of the allocation or apportionment provisions of this section result in an unfair or inequitable proportion of the taxpayer's entire net income being assigned to this State, then the Secretary of Finance or the Secretary's delegate may permit or require the exclusion or alteration of the weight to be given to 1 or more of the factors in the formula specified above or the use of separate accounting or other method to produce a fair and equitable result.

State ¹	Written guidance ²	Burden of proof on party seeking to apply alternative apportionment ³	Burden of proof on taxpayer ⁴	Taxpayer's clear and convincing evidence ⁵	Taxpayer's preponderance of the evidence ⁶	State's clear and convincing evidence ⁷	State's preponderance of the evidence ⁸
District of Columbia	Yes ²⁵	No	Yes	Yes	No	Yes	No
Florida	Yes ²⁶	Yes	No	Yes ²⁷	No	Yes ²⁸	No
Georgia	Yes ²⁹	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes ³⁰	Yes ³¹	Yes ³²	No Response ³³	No Response ³⁴	No	No
Idaho	Yes ³⁵	Yes	No	No Response ³⁶	No Response ³⁷	No Response ³⁸	No Response ³⁹
Illinois	Yes ⁴⁰	Yes	No	Yes	No	Yes	No
Indiana	Yes ⁴¹	No	Yes ⁴²	No	No	No	No
Iowa	Yes ⁴³	Yes	Yes	Yes	No	No	No
Kansas	Yes ⁴⁴	Yes	No	No Response	No Response	No Response	No Response
Kentucky	No	Yes	No	Yes	No	Yes	No
Louisiana	Yes ⁴⁵	Yes	Yes	No Response ⁴⁶	No Response ⁴⁷	No Response ⁴⁸	No Response ⁴⁹
Maine	No	No	Yes	No Response ⁵⁰	No Response ⁵¹	No Response ⁵²	No Response ⁵³

²⁵ DC: See DC Code 47-1810.02(h).

²⁶ FL: See Rule 12C-1.0152, F.A.C.

²⁷ FL: Rule 12C-1.052, F.A.C., uses the phrase “clear and cogent evidence.”

²⁸ FL: *Id.*

²⁹ GA: Varies depending upon code section.

³⁰ HI: See Section 18-235-38-01, Hawaii Administrative Rules.

³¹ HI: *Id.*

³² HI: *Id.*

³³ HI: The taxpayer must provide data clearly showing that the apportionment formula does not fairly determine Hawaii’s net income taxes due to the peculiar nature of the taxpayer’s business and that the proposed method more clearly reflects income attributable to Hawaii.

³⁴ HI: *Id.*

³⁵ ID: Idaho Code section 63-3027(s) and IDAPA 35.01.01.560 provide for special rules including alternate methods of apportionment.

³⁶ ID: The Tax Commission has made no ruling on this fact situation.

³⁷ ID: *Id.*

³⁸ ID: *Id.*

³⁹ ID: *Id.*

⁴⁰ IL: See IITA Section 304(f); 86 Ill. Adm. Code 100.3390.

⁴¹ IN: See IC 6-3-2-2(I); 45 IAC 3.1-1-62.

⁴² IN: See *Indiana Dep’t of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); **may be subject to legislative developments.**

⁴³ IA: Iowa Administrative Rule 701-54.9 provides guidance on requesting an alternative method of apportionment.

⁴⁴ KS: Taxpayer may petition or Secretary may require. Party invoking K.S.A. 79-3288 has burden of proof to demonstrate three-factor formula apportionment does not fairly represent taxpayer’s business activity in state. See K.A.R. 92-12-53.

⁴⁵ LA: See LAC 61:I.1132(B).

⁴⁶ LA: To obtain permission to use the separate accounting method, the taxpayer must show that formula apportionment produces a manifestly unfair result. In a dispute between the taxpayer and the state, the party urging the use of separate accounting has the burden to show that formula apportionment produces a manifestly unfair result.

⁴⁷ LA: *Id.*

⁴⁸ LA: *Id.*

⁴⁹ LA: *Id.*

⁵⁰ ME: For Maine purposes, the party (taxpayer or State Tax Assessor) wishing to invoke alternative apportionment must demonstrate that the apportionment provisions do not accurately reflect the taxpayer’s business activity in Maine. See 36 M.R.S.A. §5211(17) and Rule 801(.03) & (.08)(A).

⁵¹ ME: *Id.*

⁵² ME: *Id.*

⁵³ ME: *Id.*

State ¹	Written guidance ²	Burden of proof on party seeking to apply alternative apportionment ³	Burden of proof on taxpayer ⁴	Taxpayer's clear and convincing evidence ⁵	Taxpayer's preponderance of the evidence ⁶	State's clear and convincing evidence ⁷	State's preponderance of the evidence ⁸
Maryland	Yes ⁵⁴	Not Applicable ⁵⁵	Not Applicable ⁵⁶	No ⁵⁷	No ⁵⁸	Not Applicable	Not Applicable
Massachusetts ⁵⁹	Yes	Depends	Depends	Depends	Depends	No	No
Michigan ⁶⁰	No	Yes	No	No	Yes	No	Yes
Minnesota	Yes ⁶¹	Yes	No	Yes	Yes	Yes	Yes
Mississippi	No	Yes	No	No	Yes	No	Yes
Missouri	Yes ⁶²	No	Yes	No	Yes	Not Applicable ⁶³	Not Applicable ⁶⁴
Montana	No Response	Yes ⁶⁵	No ⁶⁶	No ⁶⁷	No ⁶⁸	No ⁶⁹	No ⁷⁰
Nebraska	Yes ⁷¹	No ⁷²	Yes ⁷³	No Response	No Response	No Response	No Response
New Hampshire ⁷⁴	Yes	Yes	No	No Response	No Response	No Response	No Response
New Jersey ⁷⁵	Yes	Not Applicable	Not Applicable	Yes ⁷⁶	No ⁷⁷	No ⁷⁸	No ⁷⁹
New Mexico	Yes	Yes	Yes	Yes	Yes	No	No
New York City	Yes	Yes	No	No Response	No Response	No Response	No Response

⁵⁴ MD: Guidance is provided for in Tax-General Article, §10-402, Annotated Code of Maryland and Code of Maryland Regulations (COMAR) 03.04.03.08.

⁵⁵ MD: The taxpayer must receive permission from the Comptroller to use an alternative apportionment method. The Comptroller has complete discretion to approve or deny such a request.

⁵⁶ MD: *Id.*

⁵⁷ MD: *Id.*

⁵⁸ MD: *Id.*

⁵⁹ MA: "A taxpayer seeking alternative apportionment must attach to its duly-filed return a statement of the reasons why the corporation believes that the allocation and apportionment provisions of this chapter are not reasonably adapted to approximate its net income derived from business carried on within this commonwealth and a description of the method of allocation sought by it." See G.L. c. 63, s. 42.

⁶⁰ MI: See MCL 203.667.

⁶¹ MN: See Revenue Notice #04-07 and Minnesota Rules, part 8020.0100.

⁶² MO: 12 CSR 10-2.075 (61), 12 CSR 10-2.075 (62), and 143.461 allow requests for permission to use an alternative apportionment method.

⁶³ MO: There is no burden of proof for the State.

⁶⁴ MO: *Id.*

⁶⁵ MT: The party invoking the alternative apportionment method under §15-31-312, Montana Code Annotated, has the burden of proof.

⁶⁶ MT: *Id.*

⁶⁷ MT: To invoke alternative apportionment - must show that normal allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in the state. See §15-31-312, Montana Code Annotated.

⁶⁸ MT: *Id.*

⁶⁹ MT: *Id.*

⁷⁰ MT: *Id.*

⁷¹ NE: Neb. Rev. Stat. §77-2734.15 provides for a special apportionment formula. See Reg-24-381 for rules in this area.

⁷² NE: Neb. Rev. Stat. §77-2781 places the burden of proof generally on the taxpayer for most matters.

⁷³ NE: *Id.*

⁷⁴ NH: See RSA 77-A:3, II and N.H. Admin. Rules, Rev 304.06.

⁷⁵ NJ: N.J.S.A. 54:10A-8 provides for a discretionary adjustment of the allocation factor by the Division. Regulation 18:7-8.3 provides guidelines. Regulation 18:7-10.1 allows taxpayers to request an adjustment. The statute and regulations do not specify a burden of proof.

⁷⁶ NJ: Taxpayer's burden is clear and cogent evidence. To require a taxpayer to use an alternative method, the Division's discretionary adjustment must satisfy the standards of the Due Process and Commerce Clauses of the United States Constitution. See *New Jersey Natural Gas Co. v. Director, Division of Taxation*, 24 NJ Tax 59 (2008).

⁷⁷ NJ: *Id.*

⁷⁸ NJ: *Id.*

⁷⁹ NJ: *Id.*

State ¹	Written guidance ²	Burden of proof on party seeking to apply alternative apportionment ³	Burden of proof on taxpayer ⁴	Taxpayer's clear and convincing evidence ⁵	Taxpayer's preponderance of the evidence ⁶	State's clear and convincing evidence ⁷	State's preponderance of the evidence ⁸
North Carolina	Yes ⁸⁰	Yes	No	Yes ⁸¹	No ⁸²	No ⁸³	No ⁸⁴
North Dakota	No	Yes	No	Yes	No	Yes	No
Oklahoma	No Response	No	Yes	No Response	No Response	No Response	No Response
Oregon ⁸⁵	Yes	No Response	No Response	No Response	No Response	No Response	No Response
Pennsylvania	No	Yes	No	Yes	No	Yes	No
Rhode Island ⁸⁶	No	Yes	Yes	Yes	No	Yes	No
Tennessee	Not Applicable ⁸⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas	No Response ⁸⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Utah	No	Yes ⁸⁹	No ⁹⁰	Yes	No	Yes	No
Vermont	No	No	No	No	No	No	No
Virginia	Yes ⁹¹	Yes	Yes	Yes ⁹²	No	No	No
West Virginia	Yes ⁹³	Yes	Yes	No	Yes ⁹⁴	No	Yes

⁸⁰ NC: NCGS 105-130.4(t1) provides that “A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation’s belief and propose an alternative method.”

⁸¹ NC: *Id.*

⁸² NC: *Id.*

⁸³ NC: *Id.*

⁸⁴ NC: *Id.*

⁸⁵ OR: See ORS 314.667 Extent of business activity within Oregon. “If the application of the allocation and apportionment provisions of ORS 314.605 to 314.675 do not fairly represent the extent of the taxpayer’s business activity in the state, the taxpayer may petition...” for approval to use an alternative apportionment method.

⁸⁶ RI: Refer to Rhode Island General Law 44-11-15.

⁸⁷ TN: Tennessee has no statutory alternative apportionment provisions. Tenn. Code Ann. §67-4-2014 does permit the Commissioner of Revenue to grant or require a variance from the statutory apportionment provisions if the statutory provisions do not fairly represent the taxpayer’s business activities in Tennessee. Other than the statutory provisions and Tenn. Comp. R. & Regs. 1320-6-1-.35, there are no written guidelines with regard to when a variance may be imposed or granted.

⁸⁸ TX: Entities may not elect to use the MTC’s 3-factor apportionment formula or any alternative formula in lieu of the single factor apportionment formula based on gross receipts as specifically provided for in Texas Tax Code §171.105.

⁸⁹ UT: Generally.

⁹⁰ UT: Not generally.

⁹¹ VA: The statutory authority for alternative apportionment is Va. Code §58.1-421. Virginia has also established policies on alternative apportionment through 23 VAC 10-120-280 and numerous rulings of the Tax Commissioner.

⁹² VA: The taxpayer must demonstrate clear and cogent evidence. **See numerous rulings of the Tax Commissioner.**

⁹³ WV: See W. Va. Code §§11-24-7(h) and 7a; 110 C.S.R. 24.7a.1.e. and 110 C.S.R. 24.7a. The burden of proof rests on whichever party (*i.e.*, the Tax Commissioner or the taxpayer) seeks employment of the alternative apportionment method.

⁹⁴ WV: See W.Va. Code §11-24-7(h)(3)(B).

State ¹	Written guidance ²	Burden of proof on party seeking to apply alternative apportionment ³	Burden of proof on taxpayer ⁴	Taxpayer's clear and convincing evidence ⁵	Taxpayer's preponderance of the evidence ⁶	State's clear and convincing evidence ⁷	State's preponderance of the evidence ⁸
Wisconsin	Yes ⁹⁵	Yes ⁹⁶	Yes ⁹⁷	Yes ⁹⁸	Yes ⁹⁹	No ¹⁰⁰	No ¹⁰¹

⁹⁵ WI: Section 71.25(6), Wis. Stats. (2015-16), addresses allocation and separate accounting and apportionment. In general, a corporation that is engaged in unitary business both in and outside of Wisconsin uses a single sales factor apportionment to determine their Wisconsin share of income from the unitary business. However, corporations in certain specialized industries such as direct air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, and telecommunications companies are required to apportion using more than one factor. A corporation engaged in a nonunitary business in and outside Wisconsin is required to use separate accounting. A nonunitary business is one in which the operations in Wisconsin are not dependent upon or contributory to the operations outside Wisconsin. If a unitary corporation or combined group believes separate accounting more clearly reflects the corporation's or combined group's Wisconsin net income, the unitary business must obtain the approval of the Department prior to using separate accounting, sec. Tax 2.44, Wis. Adm. Code (May 2015 Register). In addition, a qualifying combined group may petition the department to use an alternative apportionment method (see sec. 71.255(5)(b), Wis. Stats. (2015-16) and sec. Tax 2.64, Wis. Adm. Code (May 2015 Register)). A qualifying combined group is a combined group for which 30 percent or more of the combined unitary income would, in the absence of combined reporting, be required to be apportioned using more than one factor under a method for certain specialized industries.

⁹⁶ WI: Sections 71.25(6) and (12), Wis. Stats. (2015-16), provides details about when special apportionment allocation methods and separate accounting is allowed. Section Tax 2.44 and 2.45, Wis. Adm. Code (May 2015 Register), provides interpretation of secs. 71.25(6) and (12), Wis. Stats. (2015-16).

⁹⁷ WI: *Id.*

⁹⁸ WI: *Id.*

⁹⁹ WI: *Id.*

¹⁰⁰ WI: *Id.*

¹⁰¹ WI: *Id.*

Sourcing Receipts: State Conformity to the Multistate Tax Compact and Regulations (Part 1 of 3)

State ¹	MTC party ²	Material provisions ³	Article III(1) Allocation/Appportionment ⁴	Article IV Division of Income ⁵
Alabama	Yes	No	No Response	No
Alaska	Yes	Yes ⁶	Yes ⁷	Yes ⁸
Arizona	No	No	No	Yes ⁹
Arkansas	Yes	No	No Response ¹⁰	No Response ¹¹
California	No	No	No	No
Colorado	Yes	No	No	Yes
Connecticut	No	No Response ¹²	No Response ¹³	No Response ¹⁴
Delaware	No	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	No	No	No
Florida ¹⁵	No	Not Applicable	Not Applicable	Not Applicable
Georgia	No	No Response	No Response	No Response
Hawaii	Yes	No	Yes	Yes
Idaho	Yes	Yes	Yes ¹⁶	Yes
Illinois	No	No	No	No
Indiana	No	Not Applicable	Not Applicable	Not Applicable
Iowa ¹⁷	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state is a party to the Multistate Tax Compact (*i.e.*, the Compact is currently a part of your state's enacted tax statutes).

³ Does your state conform to all effective provisions of the material provisions of the Multistate Tax Commission's (MTC) Multistate Tax Compact (Articles I through XII), except for Article IX, Arbitration, which has never been implemented?

⁴ Does your state conform to Article III(1) of the Multistate Tax Compact (allowing taxpayer to elect to apportion and allocate income according to state law or according to Multistate Tax Compact Article IV)?

⁵ Does your state conform to Article IV of the Multistate Tax Compact (UDITPA)?

⁶ AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact. Alaska does not conform to these provisions for oil and gas corporations.

⁷ AK: *Id.*

⁸ AK: *Id.*

⁹ AZ: Arizona has adopted most of the original MTC compact and some of the corresponding regulations. Not all the definitions.

¹⁰ AR: Article III does allow taxpayers to apportion according to Article IV. However, Arkansas has modified Article IV to require a double weighted sales factor.

¹¹ AR: *Id.*

¹² CT: Connecticut does not conform to the provisions of the Multistate Tax Compact.

¹³ CT: *Id.*

¹⁴ CT: *Id.*

¹⁵ FL: Florida is an Associate Member.

¹⁶ ID: See IDAPA 35.01.01.310 (Rule 310).

¹⁷ IA: While Iowa is not a member of the compact, some of Iowa's administrative rules are similar to those developed by the MTC. For example, the definition of business income and receipts from services are similar for Iowa as those done by the MTC.

State ¹	MTC party ²	Material provisions ³	Article III(1) Allocation/ Apportionment ⁴	Article IV Division of Income ⁵
Kansas	Yes	Yes	Yes	Yes
Kentucky	No	No	No	No
Louisiana	No	Not Applicable	Not Applicable	Not Applicable
Maine	No	No	No	Yes ¹⁸
Maryland	No	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	No	No	No
Michigan	No	No	No	No
Minnesota	No	No	No	No
Mississippi	No	No	No	No
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	No	No	No	No
New Hampshire	No	No Response	No Response	No Response
New Jersey	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes
New York City	No	No	No Response¹⁹	No Response²⁰
North Carolina	No	Not Applicable	Not Applicable	Not Applicable
North Dakota	Yes	Yes	No Response ²¹	Yes
Oklahoma	No	No	No Response	No Response
Oregon	Yes ²²	No	No	Yes ²³
Pennsylvania	No	Not Applicable	Not Applicable	Not Applicable
Rhode Island	No	No	Yes	No
Tennessee ²⁴	No	No	No	No
Texas	Yes	No	No	No
Utah	Yes	No	No	No
Vermont	No	No	No	No
Virginia	No	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	No	No
Wisconsin	No	No	No	No

¹⁸ ME: While Maine generally conforms to Article IV, Maine does not differentiate between business and non-business income.

¹⁹ NYC: The NYC Business Corporation Tax includes elements that are similar to, but not exactly the same as, the Recommended Amendments.

²⁰ NYC: *Id.*

²¹ ND: In any year beginning after 2015, a corporation may make a five year election to weight its sales factor more heavily - 2016 and 2017 - 50% weighting; 2018 - 75% weighting; 2019 and thereafter - 100% weighting.

²² OR: Oregon repealed Multistate Tax Compact in 2013 (formerly ORS 305.655) and adopted a modified Compact (see ORS 305.653) with Articles 3 and 4 intentionally omitted. Although the Compact now does not contain Article 4, the general UDITPA provisions of Article 4 have in large part been adopted and made part of ORS Chapter 314 (see ORS 314.605 to 314.675).

²³ OR: *Id.*

²⁴ TN: Tennessee is an associate member of the MTC.

Sourcing Receipts: State Conformity to the Multistate Tax Compact and Regulations (Part 2 of 3)

State ¹	Business income definition ²	Sales definition ³	Three-factor formula ⁴	"Compensation paid in this state" definition ⁵	"Sales of tangible personal property in this State" definition ⁶	"Sales of other than tangible personal property in this State" definition ⁷	Alternative apportionment Article IV(18) ⁸
Alabama	No	Yes	No	Yes	Yes	No	Yes
Alaska ⁹	Yes	Yes	Yes ¹⁰	Yes	Yes	Yes	Yes ¹¹
Arizona	Yes	Yes	No ¹²	Yes	Yes	Yes ¹³	Yes
Arkansas	Yes	Yes	No ¹⁴	Yes	Yes	Yes	Yes
California	No	No	No	No	No	No	No
Colorado	Yes	Yes	No	Yes	Yes	Yes	Yes
Connecticut ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	No	No	No	No	No	No
Florida ¹⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	No Response ¹⁷	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state conform to the definition of "business income" in Article IV(1)(a) of the Multistate Tax Compact?

³ Does your state conform to the definition of "sales" in Article IV(1)(g) of the Multistate Tax Compact?

⁴ Does your state conform to the three-factor apportionment formula in Article IV(9) of the Multistate Tax Compact?

⁵ Does your state conform to the definition of "compensation paid in this State" in Article IV(14) of the Multistate Tax Compact?

⁶ Does your state conform to the definition of "sales of tangible personal property in this State" in Article IV(16) of the Multistate Tax Compact?

⁷ Does your state conform to the definition of "sales of other than tangible personal property in this State" in Article IV(17) of the Multistate Tax Compact?

⁸ Does your state conform to Article IV(18) of the Multistate Tax Compact regarding alternative apportionment?

⁹ AK: Alaska conforms to the extent there is no other provision in Alaska statutes that modify the compact.

¹⁰ AK: Alaska does not conform to these provisions for oil and gas corporations.

¹¹ AK: *Id.*

¹² AZ: Arizona has the option of a double weighted sales factor (50%) and 25% Property and 25% Payroll or **100% Sales**.

¹³ AZ: Arizona also has special rules for multistate service providers, see A.R.S. 43-1147.

¹⁴ AR: Article III does allow taxpayers to apportion according to Article IV. However, Arkansas has modified Article IV to require a double weighted sales factor.

¹⁵ CT: Connecticut does not conform to the provisions of the Multistate Tax Compact.

¹⁶ FL: Florida is an Associate Member.

¹⁷ ID: Notwithstanding the Compact's three factor formula, Idaho Code section 63-3027(i) requires the use of a double-weighted sales factor except for certain corporations that are utilities.

State ¹	Business income definition ²	Sales definition ³	Three-factor formula ⁴	“Compensation paid in this state” definition ⁵	“Sales of tangible personal property in this State” definition ⁶	“Sales of other than tangible personal property in this State” definition ⁷	Alternative apportionment Article IV(18) ⁸
Illinois	No	Yes	No	No Response ¹⁸	Yes	No	No
Indiana	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Iowa ¹⁹	No	No	No	No	No	No	No
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No	No	No	No	No
Louisiana	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	No	No	No	No	No	No	No
Maryland	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	No	No	No	No	No	No
Michigan	No	No	No	Yes	Yes	No	No
Minnesota	No	No	No	No	No	No	No
Mississippi	No	No	No	No	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Montana	Yes	No	Yes	Yes	Yes	Yes	Yes
Nebraska	No	No	No	No	No	No	No
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	No	No	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York City²⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Dakota	Yes	Yes	No Response ²¹	Yes	Yes	Yes	Yes
Oklahoma	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ²²	Yes	Yes	No	Yes	Yes	Yes	Yes
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	No	No	No	No	No	No	No

¹⁸ IL: Illinois uses only the sales factor.

¹⁹ IA: While Iowa is not a member of the compact, some of Iowa’s administrative rules are similar to those developed by the MTC. For example, the definition of business income and receipts from services are similar for Iowa as those done by the MTC.

²⁰ **NYC: The NYC Business Corporation Tax includes elements that are similar to, but not exactly the same as, the Recommended Amendments.**

²¹ ND: In any year beginning after 2015, a corporation may make a five year election to weight its sales factor more heavily - 2016 and 2017 - 50% weighting; 2018 - 75% weighting; 2019 and thereafter - 100% weighting.

²² OR: Oregon repealed Multistate Tax Compact in 2013 (formerly ORS 305.655) and adopted a modified Compact (see ORS 305.653) with Articles 3 and 4 intentionally omitted. Although the Compact now does not contain Article 4, the general UDITPA provisions of Article 4 have in large part been adopted and made part of ORS Chapter 314 (see ORS 314.605 to 314.675).

State ¹	Business income definition ²	Sales definition ³	Three-factor formula ⁴	“Compensation paid in this state” definition ⁵	“Sales of tangible personal property in this State” definition ⁶	“Sales of other than tangible personal property in this State” definition ⁷	Alternative apportionment Article IV(18) ⁸
Tennessee ²³	No ²⁴	Yes	No	Yes	Yes	Yes	No
Texas	No	No	No	No	No	No	No
Utah	No	No	No	No	No	No	No
Vermont	No	No	No	No	No	No	No
Virginia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	Yes	No	Yes	No	No	No
Wisconsin	No	No	No	No ²⁵	No ²⁶	No	No ²⁷

²³ TN: Tennessee is an associate member of the MTC.

²⁴ TN: Tennessee’s definition of business earnings includes the MTC’s definition, but adds to it.

²⁵ WI: Wisconsin does not conform to the MTC Multistate Tax Compact, however Wisconsin law has provisions similar to those found in the Compact.

²⁶ WI: *Id.*

²⁷ WI: *Id.*

Sourcing Receipts: State Conformity to the Multistate Tax Compact and Regulations (Part 3 of 3)

State ¹	“Apportionable income” Article IV.1(a) ²	“Receipts” Article IV.1(g) ³	Market-based sourcing Article IV.17(a) ⁴	MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5) and (6) ⁵	MTC Allocation and Apportionment Regulation IV.1.(b) ⁶	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) ⁷
Alabama	No ⁸	No	Yes	No	No	No
Alaska	No	No	No	No	No	No
Arizona	No	No	No	No ⁹	No	No
Arkansas	No Response	No Response	No Response	No Response	No Response	No Response
California	No	No ¹⁰	No ¹¹	No	No	No
Colorado	No Response	No Response	No Response	Yes	No	Yes
Connecticut ¹²	No Response	No Response	No Response	No Response	No Response	No Response
Delaware	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	No	Yes	No	No	No
Florida ¹³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	No	No	No	No	No	No

¹ Responses in bold indicate the answers changed from last year’s survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent’s answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state conform to Article IV.1(a) changing “business income” to “apportionable income” and expanding the definition and scope of what formerly “business income” to all income that is apportionable under the U.S. Constitution?

³ Does your state conform to Article IV.1(g) changing “sales” to “receipts” and narrowing the definition of what was formerly “sales” to exclude hedging transactions and treasury receipts from the sales factor?

⁴ Does your state conform to Article IV 17(a) moving from cost-of-performance to market-based sourcing for services and intangibles?

⁵ Does your state conform to MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5), and (6) (i.e., “Trade or Business,” “Transactional Test,” and “Functional Test”)?

⁶ Does your state conform to MTC Allocation and Apportionment Regulation IV.1.(b) “Principles for Determining the Existence of a Unitary Business”?

⁷ Does your state conform to the 2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) that expanded the definition of “business activity” to include “income producing activity performed on behalf of a taxpayer by an agent or independent contractor...”?

⁸ AL: No, but business income definition was expanded. See 40-27-1.1.

⁹ AZ: In *Harris Corporation and Consolidated Subsidiaries v. Arizona Department of Revenue*, 233 Ariz 377, 312 P3d 1143, 11/26/2013, the Arizona Court of Appeals agreed with the Department that Arizona has the functional test.

¹⁰ CA: RTC §25120(e) and RTC §25120(f) define sales as all gross receipts of the taxpayer not allocated under 25123 to 25127. RTC §25120(f) excludes hedging transactions and treasury receipts from the sales factor.

¹¹ CA: RTC §25136 employs market-based sourcing for sales of other than tangible personal property.

¹² CT: Connecticut does not conform to the provisions of the Multistate Tax Compact.

¹³ FL: Florida is an Associate Member.

State ¹	“Apportionable income” Article IV.1(a) ²	“Receipts” Article IV.1(g) ³	Market-based sourcing Article IV.17(a) ⁴	MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5) and (6) ⁵	MTC Allocation and Apportionment Regulation IV.1.(b) ⁶	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) ⁷
Idaho	No	No	No	No Response ¹⁴	No Response ¹⁵	No Response ¹⁶
Illinois	Yes	No	No	No	No	No
Indiana	Yes ¹⁷	No	No	No	No	No
Iowa ¹⁸	No	No	No	No	No	No
Kansas	No	No	No	Yes	Yes	No
Kentucky	No	No	No	No	No	No
Louisiana	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maine	No	No	No	No	No	No
Maryland	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	No	Depends	No	No	No
Michigan	No	No	No	No	No	No
Minnesota	No	No	No	No	No	No
Mississippi	No	No	Yes	No	No	No
Missouri	No	No	No	Yes	Yes	No
Montana	No	No	No	Yes	Yes	No
Nebraska	No	No	No	No	No	No
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	No	No	No	No	No	No
New Mexico	No	No	No	No	No	No
New York City¹⁹	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Dakota	No	No ²⁰	No	Yes ²¹	Yes ²²	No
Oklahoma	No Response	No Response	No Response	No Response	No Response	No Response

¹⁴ ID: Idaho’s language is for the most part consistent with that of the MTC regulations. See IDAPA 35.01.01.330 thru IDAPA 35.01.01.336 (business income); IDAPA 35.01.01.340 thru 35.01.01.344 (Unitary Principals).

¹⁵ ID: *Id.*

¹⁶ ID: Idaho added language similar to that of the MTC regulation. See IDAPA 35.01.01.550.03.

¹⁷ IN: Effective 1/1/2016.

¹⁸ IA: While Iowa is not a member of the compact, some of Iowa’s administrative rules are similar to those developed by the MTC. For example, the definition of business income and receipts from services are similar for Iowa as those done by the MTC.

¹⁹ **NYC: The NYC Business Corporation Tax includes elements that are similar to, but not exactly the same as, the Recommended Amendments.**

²⁰ ND: Existing regulations in North Dakota Administrative Code 81-03-09-26 generally already exclude such receipts.

²¹ ND: These regulations have not been adopted but are generally followed in principle as a matter of policy and are consistent with existing regulations.

²² ND: *Id.*

State ¹	“Apportionable income” Article IV.1(a) ²	“Receipts” Article IV.1(g) ³	Market-based sourcing Article IV.17(a) ⁴	MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5) and (6) ⁵	MTC Allocation and Apportionment Regulation IV.1.(b) ⁶	2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) ⁷
Oregon	No Response ²³	No Response ²⁴	No Response ²⁵	Yes	Yes	Yes
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	Yes	No	Yes	Yes	Yes	Yes
Tennessee ²⁶	No	No	No	No	No ²⁷	No
Texas	No	No	No	No	No	No
Utah	No	No	No	Yes	Yes	No
Vermont	No	No	No	No	No	No
Virginia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	No	No	No	No
Wisconsin	No	No	No ²⁸	No	No	No

²³ OR: To be determined.

²⁴ OR: *Id.*

²⁵ OR: *Id.*

²⁶ TN: Tennessee is an associate member of the MTC.

²⁷ TN: *But see* unitary business definition under TCA §67-4-2004(51).

²⁸ WI: Wisconsin does not conform to the MTC Multistate Tax Compact, however Wisconsin law has provisions similar to those found in the Compact.

Pass-Through Entities

Pass-Through Entities: States Take Varied Approaches Applying Corporate Tax Law Concepts, Reporting Requirements

Pass-through entities are the hybrids of business taxation: they are business entities for which tax liability is generally attributable to the amount of individual income tax imposed on partners, members, owners or shareholders. However, states are increasingly applying corporate income tax concepts, such as business or nonbusiness income and apportionment, to pass-through entities operating in more than one state, and it is often unclear how these concepts are applied in each jurisdiction. The states also take different approaches on how they impose income tax on the gain recognized by the disposition of an out-of-state corporation's or nonresident individual's ownership interest in a pass-through entity that does business within their jurisdiction.

Another area of uncertainty arises from the varying mechanisms states use to collect tax from nonresident owners, members, partners or shareholders of pass-through entities. There is little uniformity among the jurisdictions in how these collection procedures are applied. Therefore, complying with each state's unique rules requires a careful analysis of each jurisdiction's laws.

Classification of Income

Twenty-two states, among them California, said they require a partnership to classify its income as business or nonbusiness income at the entity level. Several of those states also said they require such entities to make the classification at the owner level. States that said "yes" to both questions are Alabama, Arkansas, Colorado, Hawaii, Kansas, Mississippi, Oregon and Wisconsin.

"It is inconsistent and sounds as if a state is double-dipping when it tests at both the entity level and the partner level," Bruce P. Ely, a tax partner with Bradley Arant Boult Cummings LLP in Birmingham, Alabama, said.

In response to the question of how guaranteed payments to nonresident partners are classified, 18 states said they deemed them to be business income. Included in this group was North Carolina, which explained it requires guaranteed payments from partnerships to be added back to federal taxable income by the partners in the partnership.

In response to the question of how guaranteed payments to nonresident partners for professional or personal services performed in another state are classified, 18 states said they deemed them to be business income. The same 18 states also said that they would classify guaranteed payments to nonresident partners for other than personal professional services as business income. Only one state, Mississippi, indicated that it would classify these guaranteed payments as nonbusiness income.

Arizona did not answer these questions because it said it does not have a rule for classifying guaranteed payments. Guaranteed payments are treated like wages, the state said. "Compensation paid to individuals in the regular course of the taxpayer's business is included in the payroll factor. Compensation of individuals for activities that are connected with the production of nonbusiness income is excluded from the payroll factor," the state said.

Many states declined to give a "yes" or "no" answer to the question of whether they classified guaranteed payments for the use of capital as business or nonbusiness income. "It comes as no surprise that many states didn't answer the question," Ely told Bloomberg BNA.

"In our own research for a multistate partnership client about a year ago, we found that state departments of revenue (DORs) simply haven't focused on the issue and, in some cases, we received different answers from within the same state DOR," Ely said, adding he hopes the survey question will prompt states to look at the question more closely and arrive at a uniform answer. "The same dilemma arises with the state's recognition—or nonrecognition—of special allocations in the partnership agreement," Ely said.

For more information, see:

Corporate Income Tax Navigator at 12.

Portfolio 1500-2nd: State Taxation of Pass-Through Entities: General Principles

Portfolio 1510-2nd: State Taxation of S Corporations

Portfolio 1560-2nd: State Taxation of Limited Liability Companies and Partnerships

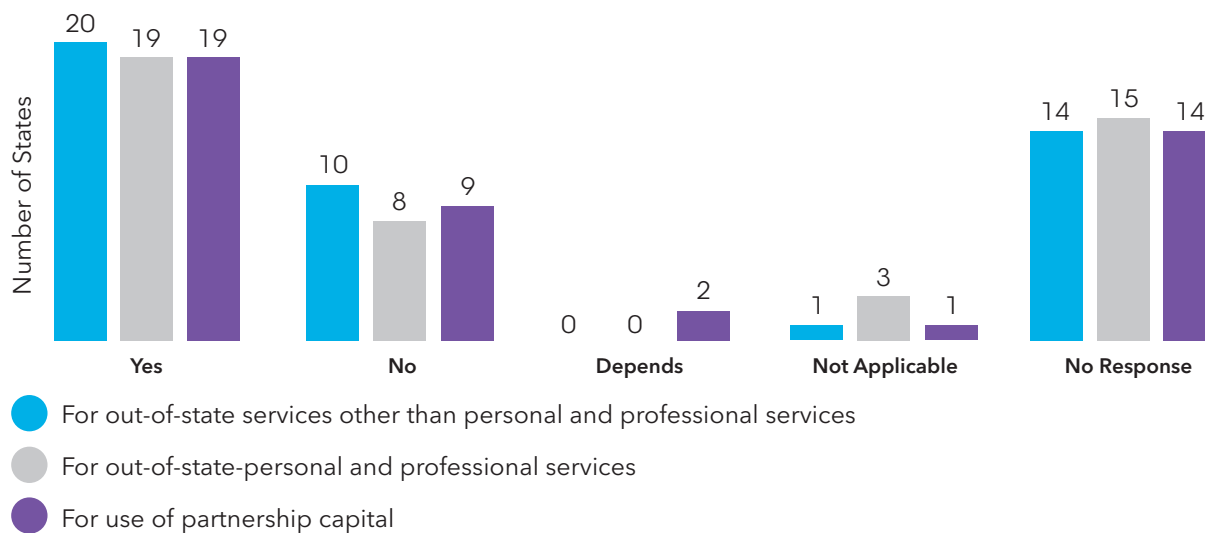
Apportionment

The method used by pass-through entities to apportion income and source sales receipts is another gray area among the states. Twenty-eight states indicated they require partnerships to apportion income at the entity level. Alabama, Connecticut, Hawaii, Indiana, New Jersey and Wisconsin indicated that income is apportioned at both the entity and owner levels.

Nearly every state said their sourcing method would remain the same regardless of whether the partners were individuals or a corporation. Only Arkansas, Minnesota and West Virginia said different sourcing methods would apply.

This year, in our questions about apportionment of guaranteed payments, we made a distinction between guaranteed payments for personal and professional services versus guaranteed payments for other types of services. There was only a slight difference in responses with 19 states indicating apportionment would be required for such payments made for out-of-state personal and professional services and 20 states indicating apportionment would be required for guaranteed payments to nonresident partners for out-of-state services other than personal and professional services. Nineteen states also said they require apportionment of guaranteed payments to nonresident partners for use of their partnership capital in states where the partnership does business. A significant number of states did not respond to these questions, indicating the confusion that exists with respect to apportioning partnership income.

Is Apportionment of Guaranteed Payments to Nonresident Partners Required?



NOTE: DC and NYC are treated as states for purposes of this chart. NV, SD, WA and WY do not impose a corporate tax based on income. NY, OH and SC did not participate in this portion of the survey. As a result, these 7 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

Composite Returns and Withholding

Most states require nonresident owners of pass-through entities that do business in their jurisdiction to withhold tax on the owners' distributive share of income derived, or connected to, in-state sources.

Seven states said they require composite returns for nonresident individuals, namely Alabama, Connecticut, Indiana, New Mexico, Oregon, Utah and West Virginia. Each of those states, with the exception of Connecticut, also said they would require a composite return for an out-of-state corporation. On the question of withholding, 23 states indicated they require withholding of estimated tax on distributive share payments to nonresident individuals, but only 16 states said a withholding requirement also applied to such payments made to out-of-state corporations.

Additional administrative requirements await those who overpay tax. Thirty states said they would require nonresident owners, members or partners subject to withholding or composite return requirements to file a return to receive a refund of any amounts withheld. Three exceptions were Arizona, Florida and Kentucky.

Disposition of Pass-Through Entity Interest

Several states said they would impose income tax on the gain recognized by the disposition of an out-of-state corporation's interest of a pass-through entity doing business in their state. For many of these states, the answer stayed the same for dispositions of a nonresident individual's managing ownership interest. Ely said he did not understand the logic of this position.

"Apparently a number of state DORs haven't yet digested the Ohio Supreme Court's landmark—but unsurprising—2016 ruling in *Corrigan v. Testa*," Ely said. That case involved one of a handful of states having statutes that at least attempt to tax a portion of the capital gain on the sale of a nonresident owner's partnership or LLC interest, he said. "If the state doesn't even have a statute to rely on, I think they're really skating on thin ice. They have both constitutional and state law challenges, except in relatively rare circumstances where nexus has been created independently and the partnership interest has established a 'business situs' in the taxing state," Ely said.

Most of the states imposing tax on these dispositions indicated that they would do so regardless of whether the scenario involved a managing or limited ownership interest. "In this scenario, there really shouldn't be a difference," Ely said. "But, I could see a state DOR having slightly more success with some courts in arguing that the owner of a general partnership interest—by virtue of operating the business in-state or having a right to do so—has created nexus for the partnership interest itself, and thereby overridden the traditional Latin maxim of *mobilia sequuntur personam*."

Responses to additional questions about the treatment of pass-through entities are available in the charts on the following pages.

Treatment of Pass-Through Entities: Classification of Income (Part 1 of 2)

State ¹	Requires partnership to classify income at entity level ²	Requires partnership to classify income at owner level ³	Classifies guaranteed payments for services, other than personal or professional services, as business income ⁴	Classifies guaranteed payments for services, other than personal or professional services, as nonbusiness income ⁵
Alabama	Yes	Yes	Yes	No
Alaska ⁶	No Response	No Response	No Response	No Response
Arizona	Yes	No	No Response⁷	No Response⁸
Arkansas	Yes	Yes	Yes	No
California	Yes ⁹	No ¹⁰	Yes¹¹	No¹²
Colorado ¹³	Yes	Yes	Not Applicable	Not Applicable
Connecticut ¹⁴	No Response	No Response	No Response	No Response
Delaware	No Response	No Response	No	No
District of Columbia	Yes	No	Yes	No
Florida	No	Yes	No Response¹⁵	No Response¹⁶
Georgia	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state requires a partnership **or multi-member LLC** to classify its income as business income or nonbusiness income at the entity level.

³ Your state requires a partnership **or multi-member LLC** to classify its income as business income or nonbusiness income at the owner level.

⁴ **Your state classifies guaranteed payments to nonresident partners for services, other than personal and professional services, performed in another state as business income.**

⁵ **Your state classifies guaranteed payments to nonresident partners for services, other than personal and professional services, performed in another state as nonbusiness income.**

⁶ AK: Alaska has no position at this time.

⁷ **AZ: There is not a business v. nonbusiness classification rule for guaranteed payments. Guaranteed payments are treated like wages. Determinations of business v. nonbusiness income depend on the facts and circumstances. Compensation paid to individuals the regular course of the taxpayers its trade or business is included in the payroll factor. The compensation of individuals for activities that are connected with the production of nonbusiness income is excluded from the payroll factor.**

⁸ **AZ: Id.**

⁹ CA: CCR §25137-1(a) provides that "income arising from transactions and activity in the regular course of the partnership's trade or business constitutes business income." The regulation indicates that the business/nonbusiness income determination is made at the entity level.

¹⁰ CA: See CCR §17951-4 and CCR §25137-1.

¹¹ **CA: See 17951-4(d)(2) (Personal Income Tax).**

¹² **CA: Id.**

¹³ **CO: Payments to partners are expenses to the partnership, not income. The LLC/partnership does not classify the payments at all. The department does not normally seek to recharacterize guaranteed payments.**

¹⁴ CT: Connecticut does not distinguish between business and nonbusiness income.

¹⁵ **FL: See Section 220.02, F.S. Florida does not tax partnerships at the state level. The partnership's conduct of business, derivation of income or existence within Florida is deemed attributable to the partners, rather than to the partnership itself. The character of income depends on the facts and circumstances of the payment.**

¹⁶ **FL: Id.**

State ¹	Requires partnership to classify income at entity level ²	Requires partnership to classify income at owner level ³	Classifies guaranteed payments for services, other than personal or professional services, as business income ⁴	Classifies guaranteed payments for services, other than personal or professional services, as nonbusiness income ⁵
Hawaii	Yes	Yes	No Response ¹⁷	No Response ¹⁸
Idaho	No Response ¹⁹	No Response ²⁰	No Response ²¹	No Response ²²
Illinois	Yes	No	Yes	No
Indiana	Yes	No	Yes ²³	No ²⁴
Iowa ²⁵	Yes	No	Yes	No
Kansas	Yes	Yes	No Response	No Response
Kentucky	No	Yes	Yes	No
Louisiana	No Response	No Response	No Response	No Response
Maine ²⁷	No Response	No Response	No Response	No Response
Maryland	Yes	No	Not Applicable ²⁸	Not Applicable ²⁹
Massachusetts ³⁰	Depends	Depends	Depends	Depends
Michigan	Not Applicable ³¹	Not Applicable ³²	No ³³	No ³⁴
Minnesota	Yes	No	Yes	No
Mississippi	Yes	Yes	No	Yes
Missouri	No	Yes	Not Applicable	Not Applicable
Montana	Yes	No	No Response	No Response
Nebraska ³⁵	No	No	No Response	No Response

¹⁷ HI: See Section 235-21, HRS - Business income means income arising from transactions and activity in the regular course of the taxpayers trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

¹⁸ HI: *Id.*

¹⁹ ID: See IDAPA 35.01.01.263.03 & 35.01.01.620. Also, see Idaho Code section 63-3026A(3).

²⁰ ID: *Id.*

²¹ ID: Idaho Code section 63-3026A(3)(a)(i) defines guaranteed payments to nonresidents. Also see IDAPA 35.01.01.016. A portion (beginning at \$250K in 2014 and indexed for years after) of guaranteed payments are classified as compensation and the excess is apportioned.

²² ID: *Id.*

²³ IN: Subject to federal Constitutional limitations.

²⁴ IN: *Id.*

²⁵ IA: See rules chapter 45 for taxation of partnerships.

²⁷ ME: Maine does not distinguish between business and nonbusiness income.

²⁸ MD: Pursuant to Annotated Code of Maryland, Tax-General Article ("TG") §10-210(b)(2)(i) and (b)(3)(i), nonresident individuals are subject to Maryland income tax on any income that is derived from a business carried on wholly or partially in Maryland in which the individual is a partner. Accordingly, these classifications are not used.

²⁹ MD: *Id.*

³⁰ MA: A pass-through entity that maintains an office or engages in business in Massachusetts must deduct and withhold Massachusetts tax from the member's pro-rata share of the pass-through entity's Massachusetts-source income, unless: (1) the pass-through entity is exempt from this requirement under 830 CMR 62B.2.2(3)(b); or (2) the member is exempt from this requirement under 830 CMR 62B.2.2(3)(c).

³¹ MI: Michigan's CIT is comprised of three components: a corporate income tax, a gross direct premiums tax, and a franchise tax. The gross direct premiums tax applies only to insurance companies, and the franchise tax applies only to financial institutions. The corporate income tax is levied only upon C corporations and entities that elect to file federally as C corporations.

³² MI: *Id.*

³³ MI: Michigan's CIT does not define business or nonbusiness income. All income is subject to apportionment.

³⁴ MI: *Id.*

³⁵ NE: Nebraska law does not recognize the term "business income" or "nonbusiness income."

State ¹	Requires partnership to classify income at entity level ²	Requires partnership to classify income at owner level ³	Classifies guaranteed payments for services, other than personal or professional services, as business income ⁴	Classifies guaranteed payments for services, other than personal or professional services, as nonbusiness income ⁵
New Hampshire ³⁶	No Response	No Response	No Response	No Response
New Jersey	No	Yes ³⁷	Yes	No
New Mexico	Yes	No	Yes	No
New York City	Yes	No Response³⁸	Yes	No
North Carolina	No	Yes	Yes ³⁹	No ⁴⁰
North Dakota	Yes	No ⁴¹	No Response ⁴²	No Response ⁴³
Oklahoma ⁴⁴	No	No	No Response	No Response
Oregon	Yes	Yes	Yes	No
Pennsylvania	No	Yes	Yes	No
Rhode Island	No	No	Yes	No
Tennessee	Yes	No	Yes ⁴⁵	No ⁴⁶
Texas ⁴⁷	Yes	No	Not Applicable	Not Applicable
Utah	Depends ⁴⁸	Depends ⁴⁹	Yes	No
Vermont	No	Yes	No Response	No Response
Virginia ⁵⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	No	No
Wisconsin	Yes ⁵¹	Yes ⁵²	Depends ⁵³	Depends ⁵⁴

³⁶ NH: NH does not recognize pass-through entities. All business organizations, including entities disregarded for federal taxation, are taxed pursuant to RSA chapter 77-A and RSA chapter 77-E.

³⁷ NJ: Only for purposes of the nonresident partner withholding.

³⁸ NYC: The partner member also has to classify its income depending on the information available from the underlying partnership or LLC.

³⁹ NC: North Carolina uses the terms “apportionable income” and “nonapportionable income.” The determination is based on the facts of the case.

⁴⁰ NC: *Id.*

⁴¹ ND: Assumes the question refers to the owner of the partnership in question; and not to the partnership as the owner of a different partnership.

⁴² ND: Our state does not classify income received by individuals as “business” or “nonbusiness” income. Income of a nonresident individual is assigned to this state if it is allocable or apportionable to this state, and includes income derived from or connected with sources in this state. Except for guaranteed payments to partners made by a “Professional Service Partnership”, guaranteed payments to nonresident individuals are treated by a partner the same as a partner’s distributive share of other income from the partnership.

⁴³ ND: *Id.*

⁴⁴ OK: See O.S. §2358 generally.

⁴⁵ TN: Tennessee does not determine if guaranteed payments (Federal Schedule K income) is business or nonbusiness income based on the residency of the partner.

⁴⁶ TN: *Id.*

⁴⁷ TX: In Texas, most “pass-through” entities are subject to the franchise tax as taxable entities.

⁴⁸ UT: The answer depends on the facts of the particular situation. Generally if all components or material matters in regard to the transaction generating the income are within the pass through entity, then the determination may be made at the pass thru entity level. However, in many instances, a taxpayer will set up a multitiered or otherwise complex structure in which different components of the transaction are found in multiple entities and/or associated with several taxpayers. The classification of an item of income as business or nonbusiness income must consider all facts applicable to the generation of that income regardless of whether such facts exist within the entity(s) reporting the income. Substance over form will be followed.

⁴⁹ UT: *Id.*

⁵⁰ VA: Virginia law does not distinguish between business income and nonbusiness income. However, dividends must be allocated by corporations and pass-through entities pursuant to Va. Code §58.1-407 and all other income must be apportioned pursuant to Va. Code §58.1-408 *et seq.* See P.D. 15-240.

⁵¹ WI: The situs of partnership income that passes through to an individual partner is provided under sec. 71.04(1), Wis. Stats.

⁵² WI: *Id.*

⁵³ WI: Income from personal services of nonresident individuals, including income from professions, follows the situs of the services.

⁵⁴ WI: *Id.*

Treatment of Pass-Through Entities: Classification of Income (Part 2 of 2)

State ¹	Classifies guaranteed payments for personal or professional services as business income ²	Classifies guaranteed payments for personal or professional services as nonbusiness income ³	Classifies guaranteed payments for use of capital as business income ⁴	Classifies guaranteed payments for use of capital as nonbusiness income ⁵	Uses classification rule that differentiates between guaranteed payments for capital vs. services ⁶
Alabama	Yes	No	No Response	No Response	No ⁷
Alaska ⁸	No Response	No Response	No Response	No Response	No Response
Arizona	No Response⁹	No Response¹⁰	No Response¹¹	No Response¹²	No
Arkansas	Yes	No	Not Applicable	Not Applicable	No
California	Yes¹³	No¹⁴	Yes¹⁵	No¹⁶	No
Colorado ¹⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes
Connecticut ¹⁸	No Response	No Response	No Response	No Response	No Response
Delaware	No	No	No	No	No Response
District of Columbia	Yes	No	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² **Your state classifies guaranteed payments to nonresident partners for personal and professional services performed in another state as business income.**

³ **Your state classifies guaranteed payments to nonresident partners for personal and professional services performed in another state as nonbusiness income.**

⁴ **Your state classifies guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business as business income.**

⁵ **Your state classifies guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business as nonbusiness income.**

⁶ Your state uses a classification rule for purposes of distinguishing between business and nonbusiness income that differentiates between guaranteed payments for capital versus guaranteed payments for services.

⁷ AL: Alabama does not differentiate between guaranteed payments for capital vs. guaranteed payments for services. A partner's distributive share of partnership net income (or loss) includes any "Guaranteed Payments to Partner." See Ala. Admin. Section 810-3-24.03.

⁸ AK: Alaska has no position at this time.

⁹ **AZ: There is not a business v. nonbusiness classification rule for guaranteed payments. Guaranteed payments are treated like wages. Determinations of business v. nonbusiness income depend on the facts and circumstances. Compensation paid to individuals the regular course of the taxpayers its trade or business is included in the payroll factor. The compensation of individuals for activities that are connected with the production of nonbusiness income is excluded from the payroll factor.**

¹⁰ **AZ: Id.**

¹¹ **AZ: Id.**

¹² **AZ: Id.**

¹³ **CA: See 17951-4(d)(2) (Personal Income Tax).**

¹⁴ **CA: Id.**

¹⁵ **CA: Id.**

¹⁶ **CA: Id.**

¹⁷ **CO: Payments to partners are expenses to the partnership, not income. The LLC/partnership does not classify the payments at all. The department does not normally seek to recharacterize guaranteed payments.**

¹⁸ CT: Connecticut does not distinguish between business and nonbusiness income.

State ¹	Classifies guaranteed payments for personal or professional services as business income ²	Classifies guaranteed payments for personal or professional services as nonbusiness income ³	Classifies guaranteed payments for use of capital as business income ⁴	Classifies guaranteed payments for use of capital as nonbusiness income ⁵	Uses classification rule that differentiates between guaranteed payments for capital vs. services ⁶
Florida ¹⁹	No Response	No Response	No Response	No Response	No Response
Georgia	No Response	No Response	No Response	No Response	No Response
Hawaii	No Response ²⁰	No Response ²¹	No Response ²²	No Response ²³	Yes
Idaho	No Response ²⁴	No Response ²⁵	No Response ²⁶	No Response ²⁷	No Response ²⁸
Illinois	Yes	No	Yes	No	No
Indiana	Yes ²⁹	No ³⁰	Yes ³¹	No ³²	No
Iowa ³³	Yes	No	Yes	No	No
Kansas	No Response	No Response	No Response	No Response	No
Kentucky	Yes	No	Yes	No	Depends
Louisiana	No Response	No Response	No Response	No Response	No Response
Maine ³⁴	No Response	No Response	No Response	No Response	No Response
Maryland	Not Applicable ³⁵	Not Applicable ³⁶	Not Applicable ³⁷	Not Applicable ³⁸	No
Massachusetts ³⁹	Depends	Depends	Depends	Depends	Depends
Michigan ⁴⁰	No	No	No	No	No

¹⁹ FL: See Section 220.02, F.S. Florida does not tax partnerships at the state level. The partnership's conduct of business, derivation of income or existence within Florida is deemed attributable to the partners, rather than to the partnership itself. The character of income depends on the facts and circumstances of the payment.

²⁰ HI: See Section 235-21, HRS - Business income means income arising from transactions and activity in the regular course of the taxpayers trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

²¹ HI: *Id.*

²² HI: *Id.*

²³ HI: *Id.*

²⁴ ID: Idaho Code section 63-3026A(3)(a)(i) defines guaranteed payments to nonresidents. Also see IDAPA 35.01.01.016. A portion (beginning at \$250K in 2014 and indexed for years after) of guaranteed payments are classified as compensation and the excess is apportioned.

²⁵ ID: *Id.*

²⁶ ID: *Id.*

²⁷ ID: *Id.*

²⁸ ID: See IDAPA 35.01.01.263.03 & 35.01.01.620. Also, see Idaho Code section 63-3026A(3).

²⁹ IN: Subject to federal Constitutional limitations.

³⁰ IN: *Id.*

³¹ IN: *Id.*

³² IN: *Id.*

³³ IA: See rules chapter 45 for taxation of partnerships.

³⁴ ME: Maine does not distinguish between business and nonbusiness income.

³⁵ MD: Pursuant to Annotated Code of Maryland, Tax-General Article ("TG") §10-210(b)(2)(i) and (b)(3)(i), nonresident individuals are subject to Maryland income tax on any income that is derived from a business carried on wholly or partially in Maryland in which the individual is a partner. Accordingly, these classifications are not used.

³⁶ MD: *Id.*

³⁷ MD: *Id.*

³⁸ MD: *Id.*

³⁹ MA: A pass-through entity that maintains an office or engages in business in Massachusetts must deduct and withhold Massachusetts tax from the member's pro-rata share of the pass-through entity's Massachusetts-source income, unless: (1) the pass-through entity is exempt from this requirement under 830 CMR 62B.2.2(3)(b); or (2) the member is exempt from this requirement under 830 CMR 62B.2.2(3)(c).

⁴⁰ MI: Michigan's CIT does not define business or nonbusiness income. All income is subject to apportionment.

State ¹	Classifies guaranteed payments for personal or professional services as business income ²	Classifies guaranteed payments for personal or professional services as nonbusiness income ³	Classifies guaranteed payments for use of capital as business income ⁴	Classifies guaranteed payments for use of capital as nonbusiness income ⁵	Uses classification rule that differentiates between guaranteed payments for capital vs. services ⁶
Minnesota	Yes	No	Yes	No	No
Mississippi	No	Yes	No	Yes	No
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No
Montana	No Response	No Response	No Response	No Response	Yes
Nebraska ⁴¹	No Response	No Response	No Response	No Response	No
New Hampshire ⁴²	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	No	Yes	No	No
New Mexico	Yes	No	Yes	No	No
New York City	Yes	No	Yes	No	No
North Carolina	Yes ⁴³	No ⁴⁴	Yes ⁴⁵	No ⁴⁶	No ⁴⁷
North Dakota	No Response ⁴⁸	No Response ⁴⁹	No Response ⁵⁰	No Response ⁵¹	No
Oklahoma ⁵²	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	Yes	No	No
Pennsylvania	Yes	No	Yes	No	No
Rhode Island	Yes	No	Yes	No	Yes
Tennessee	Yes ⁵³	No ⁵⁴	Yes ⁵⁵	No ⁵⁶	No
Texas ⁵⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No Response
Utah	Yes	No	Yes	No	No
Vermont	No Response	No Response	No Response	No Response	No Response

⁴¹ NE: Nebraska law does not recognize the term “business income” or “nonbusiness income.”

⁴² NH: NH does not recognize pass-through entities. All business organizations, including entities disregarded for federal taxation, are taxed pursuant to RSA chapter 77-A and RSA chapter 77-E.

⁴³ **NC: North Carolina uses the terms “apportionable income” and “nonapportionable income.” The determination is based on the facts of the case.**

⁴⁴ **NC: *Id.***

⁴⁵ **NC: *Id.***

⁴⁶ **NC: *Id.***

⁴⁷ NC: North Carolina requires that guaranteed payments from partnerships be added back to federal taxable income by partners in the partnership.

⁴⁸ **ND: Our state does not classify income received by individuals as “business” or “nonbusiness” income. Income of a nonresident individual is assigned to this state if it is allocable or apportionable to this state, and includes income derived from or connected with sources in this state. Except for guaranteed payments to partners made by a “Professional Service Partnership”, guaranteed payments to nonresident individuals are treated by a partner the same as a partner’s distributive share of other income from the partnership.**

⁴⁹ **ND: *Id.***

⁵⁰ **ND: *Id.***

⁵¹ **ND: *Id.***

⁵² OK: See O.S. §2358 generally.

⁵³ **TN: Tennessee does not determine if guaranteed payments (Federal Schedule K income) is business or nonbusiness income based on the residency of the partner.**

⁵⁴ **TN: *Id.***

⁵⁵ **TN: *Id.***

⁵⁶ **TN: *Id.***

⁵⁷ TX: In Texas, most “pass-through” entities are subject to the franchise tax as taxable entities.

State ¹	Classifies guaranteed payments for personal or professional services as business income ²	Classifies guaranteed payments for personal or professional services as nonbusiness income ³	Classifies guaranteed payments for use of capital as business income ⁴	Classifies guaranteed payments for use of capital as nonbusiness income ⁵	Uses classification rule that differentiates between guaranteed payments for capital vs. services ⁶
Virginia ⁵⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	No	No	No	No	No
Wisconsin	Depends ⁵⁹	Depends ⁶⁰	Depends ⁶¹	Depends ⁶²	Yes ⁶³

⁵⁸ VA: Virginia law does not distinguish between business income and nonbusiness income. However, dividends must be allocated by corporations and pass-through entities pursuant to Va. Code §58.1-407 and all other income must be apportioned pursuant to Va. Code §58.1-408 *et seq.* See P.D. 15-240.

⁵⁹ WI: **Income from personal services of nonresident individuals, including income from professions, follows the situs of the services.**

⁶⁰ WI: *Id.*

⁶¹ WI: **The situs of the income will depend on the type of income generated by the partnership.**

⁶² WI: *Id.*

⁶³ WI: The situs of partnership income that passes through to an individual partner is provided under sec. 71.04(1), Wis. Stats.

Treatment of Pass-Through Entities: Apportionment (Part 1 of 2)

State ¹	Requires partnership to apportion income at entity level ²	Requires partnership to apportion income at owner level ³	Eliminates transactions between owners and partnership before apportioning income ⁴	Sources sales receipts from partnership owned by individuals in same manner as receipts from partnership owned by corporation ⁵
Alabama	Yes	Yes	No	Yes
Alaska ⁶	No Response	No Response	No Response	No Response
Arizona	Yes	No	Yes	Yes
Arkansas	No	No	No	No
California	Depends ⁷	Depends ⁸	Depends ⁹	Yes ¹⁰
Colorado	Yes¹¹	No Response	No Response	No Response
Connecticut	Yes ¹²	Yes ¹³	No	Yes ¹⁴
Delaware	Yes	No	No	Yes
District of Columbia	Yes	No	Yes	Yes
Florida ¹⁵	No	Yes	Yes	Yes
Georgia	No Response	No Response	No Response	No Response
Hawaii	Yes	Yes	Yes	Yes
Idaho	Yes ¹⁶	No Response ¹⁷	Yes	No Response ¹⁸

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state requires a partnership to apportion income at the entity level.

³ Your state requires a partnership to apportion income at the owner level.

⁴ Your state requires transactions between the owners and the partnership to be eliminated before income is apportioned.

⁵ Your state sources sales receipts from a partnership owned by individuals to be sourced in the same manner as receipts from a partnership owned by a corporation.

⁶ AK: Alaska has no position at this time.

⁷ CA: The answer is yes if the partner is not unitary with the partnership. See CCR §25137-1(g) and CCR §17951-4.

⁸ CA: The answer is yes if the partner is unitary with the partnership. See CCR §25137-1.

⁹ CA: If the partnership and the partner are unitary, see CCR §25137-1(f)(3), "Intercompany sales between the partnership and the taxpayer shall be eliminated from the denominator and numerator of the sales factor as follows: (i) Sales by the taxpayer to the partnership to the extent of the taxpayer's interest in the partnership; (ii) Sales by the partnership to the taxpayer not to exceed the taxpayer's interest in all partnership sales."

¹⁰ CA: See CCR §17951-4.

¹¹ **CO: Corporate partners use partnership's apportionment factors calculated pursuant to 39-22-303.5, CRS and individual partners use either partnership's apportionment calculated pursuant to 39-22-303.5 or apportionment pursuant to 39-22-109 and 203, CRS.**

¹² CT: With respect to non-resident, noncorporate members.

¹³ CT: With respect to corporate members.

¹⁴ CT: Generally.

¹⁵ FL: Partnerships do not pay tax in Florida. A corporate partner determines its income from the partnership in accordance with its percentage of interest and characterizes it according to IRC subchapter K. **Florida does not have a personal income tax.**

¹⁶ ID: See IDAPA 35.01.01.620 & 35.01.01.280.

¹⁷ ID: *Id.*

¹⁸ ID: *Id.*

State ¹	Requires partnership to apportion income at entity level ²	Requires partnership to apportion income at owner level ³	Eliminates transactions between owners and partnership before apportioning income ⁴	Sources sales receipts from partnership owned by individuals in same manner as receipts from partnership owned by corporation ⁵
Illinois ¹⁹	Yes	No	No	Yes
Indiana	Yes ²⁰	Yes ²¹	Yes ²²	Yes
Iowa ²³	Yes	No	No	Yes
Kansas	No	Yes	Yes	Yes
Kentucky	No ²⁴	Yes	Depends	Yes ²⁵
Louisiana	No Response	No Response	No Response	No Response
Maine	Yes	No	Yes ²⁶	Yes
Maryland	Yes	No	Not Applicable	Not Applicable
Massachusetts ²⁷	Yes	No Response	Depends	Depends
Michigan	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Minnesota	No Response ²⁸	No Response ²⁹	No	No
Mississippi	Yes	No	No	Yes
Missouri	No	Yes	Yes	Yes
Montana	Yes	No	Yes	Yes
Nebraska	Yes	No	Depends ³⁰	Yes
New Hampshire	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	No	Yes
New Mexico	Yes	No	No	Yes
New York City³¹	No Response	No Response	No Response	No Response
North Carolina ³²	No	Yes	Yes	Yes

¹⁹ IL: Department Regulations 100.3380 requires special rules where the partner and partnership are engaged in a unitary business.

²⁰ IN: For corporations subject to Adjusted Gross Income Tax, 45 IAC 3.1-1-153 requires different treatment based on whether the partnership is unitary with its corporate partner. For non-unitary partnerships, the income is apportioned at the partnership level. For unitary partnerships and for partnerships subject to the provisions of IC 6-5.5-2-8 (financial institutions), the income is apportioned at the partner level.

²¹ IN: *Id.*

²² **IN: Receipts eliminated if the partnership's receipts included in the partner's receipts.**

²³ IA: See rules chapter 45 for taxation of partnerships. See rules chapter 54 for apportionment.

²⁴ KY: Per KRS 141.206, apportionment is calculated at the entity level, but income tax is not paid at the entity level.

²⁵ KY: Per KRS 141.120(1)(a), only corporations can classify income as business or nonbusiness.

²⁶ **ME: This applies to corporations, not individuals.**

²⁷ MA: If a partnership and a corporate partner are engaged in related business activities, the corporate partner's pro rata share of partnership property, payroll and sales are included in the partner's apportionment factors. See 830 CMR 63.38.1(12).

²⁸ **MN: See Minnesota Revenue Notice 08-03.**

²⁹ **MN: *Id.***

³⁰ NE: See Reg-24-315.

³¹ **NYC: New York City imposes an Unincorporated Business Tax on partnerships, single-member LLCs, sole proprietors, and trusts. The corporate taxes also include special rules for apportioning income from partnerships.**

³² NC: For income tax purposes, whether a corporate partner's share of the partnership's net income is classified as apportionable income or nonapportionable income depends upon the facts in each case. (See 17 NCAC 05C.1702.)

State ¹	Requires partnership to apportion income at entity level ²	Requires partnership to apportion income at owner level ³	Eliminates transactions between owners and partnership before apportioning income ⁴	Sources sales receipts from partnership owned by individuals in same manner as receipts from partnership owned by corporation ⁵
North Dakota	Yes	No Response ³³	No Response ³⁴	Yes
Oklahoma ³⁵	Yes	No	No Response	No Response
Oregon	Yes	No	Yes	Yes
Pennsylvania	No	Yes	Yes	Yes
Rhode Island	Yes	No	Yes	Yes
Tennessee	Yes	No	No	Yes
Texas ³⁶	Yes	No	No Response	No Response
Utah	Depends ³⁷	Depends ³⁸	Depends ³⁹	Yes
Vermont	Yes	No	No	Yes
Virginia	Yes	Not Applicable ⁴⁰	No	Yes
West Virginia	No	No	No	No
Wisconsin	Yes ⁴¹	Yes ⁴²	No ⁴³	Yes

³³ ND: Yes if the owner is another business entity. No if the owner is an individual.

³⁴ ND: No, except for purposes of calculating the apportionment factor of the owner, the owner's proportionate share of the intercompany sales and rent expense (between the owner and partnership) should be eliminated / excluded from the owner's apportionment factor.

³⁵ OK: See 710:50-3-54. Income tax withholding for pass-through entities.

³⁶ TX: In Texas, most "pass-through" entities are subject to the franchise tax and apply the same rules on apportionment as other taxable entities.

³⁷ UT: For corporations and other pass thru entities, the share of partnership income and apportionment factors flows into and is combined with the income and factors of the upper tier pass thru entity in calculating the Utah tax. For nonresident individual income partners/shareholders, the amount of Utah income is determined at the partnership level and included in the tax return calculations that ultimately determine the amount of Utah income tax due on the nonresident individual income tax return.

³⁸ UT: *Id.*

³⁹ UT: Transactions involving income between pass thru entities and their owners do not need to be eliminated because they generally offset one another. (*i.e.* income to one entity is expense to the other entity) For intercompany transactions between corporations and partnerships, elimination of intercompany transactions involving the apportionment factors is required.

⁴⁰ VA: Virginia requires that a partnership apportion at the entity level. The effect of the partnership's apportionment may vary from one owner to another, depending on the entity types of the owners. For instance, (1) a Virginia resident individual owner is taxable on all of his or her partnership income regardless of the partnership's apportionment; (2) a nonresident individual owner uses the partnership's Virginia apportioned income in determining his or her own Virginia nonresident percentage; and (3) a corporate owner may need to include the partnership's property, payroll and sales factors in determining its own apportionment percentage.

⁴¹ WI: The apportionment percentage of business income that passes through a partnership to an individual partner is computed at the entity level, but applied at the partner level. The situs of other partnership income that passes through to an individual partner is described under sec. 71.04(1), Wis. Stats. All income of a partnership that passes through to a corporation is included in the corporation's income; the corporation also includes its share of the partnership's apportionment factors in the corporation's apportionment computation as provided in sec. 71.25(15).

⁴² WI: *Id.*

⁴³ WI: Except certain sales are eliminated between a partnership and a combined group of corporations.

Treatment of Pass-Through Entities: Apportionment (Part 2 of 2)

State ¹	Apportions guaranteed payments to nonresident partners for out-of-state services other than personal and professional services ²	Apportions guaranteed payments to nonresident partners for out-of-state personal and professional services ³	Apportions guaranteed payments to nonresident partners for use of partnership capital ⁴	Apportions partnership income using same rules as corporations ⁵	Apportions partnership income using rules for pass-through entities instead of rules for corporations ⁶
Alabama	Yes	No Response⁷	No Response⁸	Yes	No
Alaska ⁹	No Response	No Response	No Response	No Response	No Response
Arizona	No ¹⁰	No¹¹	No ¹²	Yes	No
Arkansas	No	No	No	No	No
California	Yes ¹³	Yes	Yes ¹⁴	Depends ¹⁵	Depends ¹⁶
Colorado	No Response	Not Applicable¹⁷	No Response	No Response	No Response
Connecticut	No Response ¹⁸	No Response¹⁹	No Response ²⁰	No	Yes
Delaware	No	No	No	Yes	No
District of Columbia	Yes	Yes	Yes	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state requires apportionment of guaranteed payments to nonresident partners for services, **other than personal and professional services**, performed in another state.

³ **Your state requires apportionment of guaranteed payments to nonresident partners for personal and professional services performed in another state.**

⁴ Your state requires apportionment of guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business.

⁵ Your state requires partnerships to apportion their income using the same apportionment rules used by corporations.

⁶ Your state requires partnerships to apportion their income using apportionment rules for pass through entities instead of the apportionment rules used by corporations.

⁷ **AL: Guaranteed Payments are subject to the regular apportionment factor computed by the Pass-Through Entity.**

⁸ **AL: Id.**

⁹ AK: Alaska has no position at this time.

¹⁰ AZ: Guaranteed payments are more like wages and should be allocated to where the service is performed.

¹¹ **AZ: Id.**

¹² AZ: Unless the nonresident partner pledges the partnership capital as security for a payment of indebtedness and it acquires an Arizona business situs. *Please see:* A.R.S. 43-1092 & AZ Administrative Code R15-2C-602.

¹³ CA: Guaranteed payments are treated as California-source income like a distributive share of partnership income. RTC § 17854 does not distinguish between guaranteed payments for services and those for capital.

¹⁴ CA: *Id.*

¹⁵ CA: CCR § 25137-1 provides partnership apportionment rules. However, *see* CCR § 25137-1(a), determination of business or nonbusiness income follows RTC § 25120, same as corporations. In addition, for the property, payroll, and sales factors, CCR §§ 25129 to 25136, inclusive, apply to the extent not covered by the special rules under CCR § 25137-1 (f) (1), (2), or (3). For partnerships not unitary with the partner, RTC §§ 25129 to 25137 apply per CCR § 25137-1(g) (1).

¹⁶ CA: *Id.*

¹⁷ **CO: Corporate partners use partnership's apportionment factors calculated pursuant to 39-22-303.5, CRS and individual partners use either partnership's apportionment calculated pursuant to 39-22-303.5 or apportionment pursuant to 39-22-109 and 203, CRS.**

¹⁸ CT: DRS has no published position.

¹⁹ **CT: Id.**

²⁰ CT: *Id.*

State ¹	Apportions guaranteed payments to nonresident partners for out-of-state services other than personal and professional services ²	Apportions guaranteed payments to nonresident partners for out-of-state personal and professional services ³	Apportions guaranteed payments to nonresident partners for use of partnership capital ⁴	Apportions partnership income using same rules as corporations ⁵	Apportions partnership income using rules for pass-through entities instead of rules for corporations ⁶
Florida ²¹	No Response	No Response	No Response	No Response	No Response
Georgia	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes ²²	Yes	Yes	Yes	No
Idaho	No Response ²³	No Response ²⁴	No Response ²⁵	No Response ²⁶	No
Illinois ²⁷	Yes	Yes	Yes	Yes	No
Indiana	Yes	Yes	Yes	Yes	No
Iowa ²⁸	Yes	Yes	Yes	Yes	No
Kansas	Yes	No Response	No	Not Applicable	Not Applicable
Kentucky	Yes	Yes	Depends	Yes	No ²⁹
Louisiana	No Response	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	Yes	No
Maryland	No	Not Applicable	Not Applicable	Yes	No
Massachusetts	No Response ³⁰	No Response	No Response ³¹	No Response ³²	No Response ³³
Michigan	Yes ³⁴	Yes ³⁵	Yes ³⁶	Not Applicable	Not Applicable
Minnesota	No	Yes	Yes	Yes	No
Mississippi	No	No	No	Yes	No
Missouri	No	No	No	No	Yes
Montana	No Response	No Response	Yes	Yes	No

²¹ FL: Partnerships do not pay tax in Florida. A corporate partner determines its income from the partnership in accordance with its percentage of interest and characterizes it according to IRC subchapter K. **Florida does not have a personal income tax.**

²² HI: Does not apply to guaranteed payments to nonresident partners that are derived from rendering purely personal services. See HAR 18-235-4-07(d).

²³ ID: See Code section 63-3026A(3)(i).

²⁴ ID: *Id.*

²⁵ ID: *Id.*

²⁶ ID: See IDAPA 35.01.01.620 & 35.01.01.280.

²⁷ IL: Department Regulations 100.3380 requires special rules where the partner and partnership are engaged in a unitary business.

²⁸ IA: See rules chapter 45 for taxation of partnerships. See rules chapter 54 for apportionment.

²⁹ KY: See KRS 141.206(12).

³⁰ MA: If a partnership and a corporate partner are engaged in related business activities, the corporate partner's pro rata share of partnership property, payroll and sales are included in the partner's apportionment factors. See 830 CMR 63.38.1(12).

³¹ MA: *Id.*

³² MA: *Id.*

³³ MA: *Id.*

³⁴ MI: To the extent included in a C corporation's federal taxable income and not subtracted or eliminated from the Michigan tax base, the income would be allocated or apportioned together with the taxpayer's entire tax base.

³⁵ MI: *Id.*

³⁶ MI: *Id.*

State ¹	Apportions guaranteed payments to nonresident partners for out-of-state services other than personal and professional services ²	Apportions guaranteed payments to nonresident partners for out-of-state personal and professional services ³	Apportions guaranteed payments to nonresident partners for use of partnership capital ⁴	Apportions partnership income using same rules as corporations ⁵	Apportions partnership income using rules for pass-through entities instead of rules for corporations ⁶
Nebraska	No Response	No Response	No Response	Yes	No
New Hampshire	No Response	No Response	No Response	No Response	No Response
New Jersey	No	Yes	No	No	Yes ³⁷
New Mexico	Yes	Yes	Yes	Yes	No
New York City³⁸	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes ³⁹	Yes	Yes ⁴⁰	Yes ⁴¹	No ⁴²
North Dakota	Yes ⁴³	Yes⁴⁴	Yes	No Response ⁴⁵	No Response ⁴⁶
Oklahoma ⁴⁷	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	No	Yes
Tennessee	Not Applicable⁴⁸	Not Applicable⁴⁹	Yes	Yes	Not Applicable
Texas ⁵⁰	No Response	No Response	No Response	No Response	No Response
Utah	Yes	Yes	Yes	Yes ⁵¹	No
Vermont	Yes	Yes	Yes	Yes	No
Virginia	No ⁵²	No⁵³	No ⁵⁴	Yes	No

³⁷ NJ: See N.J.A.C. 18:35-1.3. See N.J.S.A. 54:10A-15.11 for nonresident partner withholding.

³⁸ **NYC: New York City imposes an Unincorporated Business Tax on partnerships, single-member LLCs, sole proprietors, and trusts. The corporate taxes also include special rules for apportioning income from partnerships.**

³⁹ NC: For income tax purposes, whether a corporate partner's share of the partnership's net income is classified as apportionable income or nonapportionable income depends upon the facts in each case. (See 17 NCAC 05C.1702.)

⁴⁰ NC: *Id.*

⁴¹ NC: *Id.*

⁴² NC: *Id.*

⁴³ ND: Answer is yes, except in the case of a "professional service partnership" (defined in NDCC 57-38-08.1(3)(a)) for its payments to a partner attributable to a reasonable salary for the services performed in another state.

⁴⁴ ND: *Id.*

⁴⁵ ND: Corporations may make a heavily weighted sales factor election for years after 2015. A partnership cannot. Otherwise, all apportionment rules are identical.

⁴⁶ ND: *Id.*

⁴⁷ OK: See 710:50-3-54. Income tax withholding for pass-through entities.

⁴⁸ **TN: The guaranteed payments would not be included in the ratio as they are subject to the self-employment tax.**

⁴⁹ TN: *Id.*

⁵⁰ TX: In Texas, most "pass-through" entities are subject to the franchise tax and apply the same rules on apportionment as other taxable entities.

⁵¹ UT: Generally Yes, but depends. The same rules are applied to C corporations and pass thru entities. However, the partner/shareholder's share of income and factors of partnerships that are held by a C corporation or another pass thru entity are combined with the income and factors of the C corporation or pass thru entity; *i.e.*, the upper tier partnership does not pass thru the apportioned amount of its income to the partner unless the partner is a nonresident individual or taxable trust.

⁵² VA: See P.D. 05-48.

⁵³ VA: *Id.*

⁵⁴ VA: *Id.*

State¹	Apportions guaranteed payments to nonresident partners for out-of-state services other than personal and professional services²	Apportions guaranteed payments to nonresident partners for out-of-state personal and professional services³	Apportions guaranteed payments to nonresident partners for use of partnership capital⁴	Apportions partnership income using same rules as corporations⁵	Apportions partnership income using rules for pass-through entities instead of rules for corporations⁶
West Virginia	No	No	No	No	No
Wisconsin	Yes ⁵⁵	No⁵⁶	Depends⁵⁷	Yes ⁵⁸	No ⁵⁹

⁵⁵ WI: Guaranteed payments for services performed for the partnership is apportioned based on the partnership's apportionment percentage, except guaranteed payments that are derived from personal services are taxable to nonresident partners only if the partner personally performs the services in Wisconsin.

⁵⁶ **WI: Income from personal services of nonresident individuals, including income from professions, follows the situs of the services.**

⁵⁷ **WI: The situs of the income will depend on the type of income generated by the partnership.**

⁵⁸ WI: To the extent the income is subject to apportionment, pass-through entities apportion their income in the same manner as corporations and individuals.

⁵⁹ WI: *Id.*

Treatment of Pass-Through Entities: Disposition of Pass-Through Entity Interest (Part 1 of 2)

State ¹	Out-of-state corporation's managing ownership interest ²	Nonresident individual's managing ownership interest ³	Out-of-state corporation's limited ownership interest ⁴	Nonresident individual's limited ownership interest ⁵
Alabama ⁶	Depends	Depends	Depends	Depends
Alaska	Yes	No Response ⁷	Yes	No Response ⁸
Arizona ⁹	No Response	Yes	No Response	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes ¹⁰	Depends ¹¹	Depends ¹²	Depends ¹³
Colorado ¹⁴	Yes	Yes	No	No
Connecticut	No Response ¹⁵	Depends	No Response ¹⁶	Depends
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	No
Florida	Yes	No Response ¹⁷	Yes	No Response ¹⁸
Georgia	No Response	No Response	No Response	No Response

¹ The questions in this chart are all appearing for the first time in 2017. As a result, none of the responses are in bold.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² **Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state.**

³ **Your state imposes income tax on the gain recognized by the disposition of a nonresident individual's managing ownership interest of a pass-through entity doing business in your state.**

⁴ **Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state.**

⁵ **Your state imposes income tax on the gain recognized by the disposition of a nonresident individual's limited ownership interest of a pass-through entity doing business in your state.**

⁶ AL: See *Prince v. State Department of Revenue*, No. 2080634.

⁷ AK: Alaska does not have a personal income tax.

⁸ AK: *Id.*

⁹ AZ: See Arizona Corporate Tax Ruling CTR 94-3. If a corporation disposes of a partnership interest that is an integral part of its regular trade or business, the gain realized from the disposition of the partnership interest is business income. The gain realized from such a disposition is properly includable in the business income of the corporation subject to apportionment by use of the apportionment formula. If a corporation disposes of a partnership interest which produced nonbusiness income for the corporation or if the corporation's distributive share of the partnership's real and/or tangible property was removed from the corporation's property factor for a substantial period of time prior to the year of sale, the capital gain realized from the sale of the partnership interest is nonbusiness income.

¹⁰ CA: See RTC §25120(a); CCR §25120(c)(2).

¹¹ CA: Yes if the ownership interest has acquired a business situs. See CCR §17952; *Ames et al.*, SBE, 87-SBE-042, June 17, 1987; *Bass et al.*, SBE, 89-SBE-004, January 19, 1989.

¹² CA: See RTC §25120(a); CCR §25120(c)(2).

¹³ CA: Yes if the ownership interest has acquired a business situs. See CCR §17952; *Ames et al.*, SBE, 87-SBE-042, June 17, 1987; *Bass et al.*, SBE, 89-SBE-004, January 19, 1989.

¹⁴ CO: See Department regulation 39-22-109(b)(xii) and (c). We understand the term "limited" to refer to a passive interest.

¹⁵ CT: A corporation is subject to tax on the gain to the extent that the gain is included in net income that is apportioned to this state.

¹⁶ CT: *Id.*

¹⁷ FL: Florida does not have a personal income tax.

¹⁸ FL: *Id.*

State ¹	Out-of-state corporation's managing ownership interest ²	Nonresident individual's managing ownership interest ³	Out-of-state corporation's limited ownership interest ⁴	Nonresident individual's limited ownership interest ⁵
Hawaii ¹⁹	Yes	Yes	Yes	Yes
Idaho ²⁰	No Response	No Response	No Response	No Response
Illinois	No Response ²¹	No	No Response ²²	No
Indiana	Yes ²³	No ²⁴	Yes ²⁵	No ²⁶
Iowa	Yes	Yes	Yes	Yes
Kansas	No Response	No Response	No Response	No Response
Kentucky	Yes	Yes	Depends	Depends
Louisiana	No Response	No Response	No Response	No Response
Maine	Yes	Depends ²⁷	Yes	No
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends
Michigan	Yes ²⁸	Yes ²⁹	Yes ³⁰	Yes ³¹
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Montana	Depends	No Response	Depends	No Response
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes
New York City	Yes	No Response	Yes	No Response

¹⁹ HI: See §235-4, HRS and §18-235-22 to §18-235-38.5, HAR.

²⁰ ID: The gain on a sale of an intangible.

²¹ IL: Not enough information.

²² IL: *Id.*

²³ IN: The income is taxed based on standard apportionment rules.

²⁴ IN: Assumes that the gain is treated solely as a sale of the interest. The answer may change to the extent the sale is treated as an asset sale.

²⁵ IN: The income is taxed based on standard apportionment rules.

²⁶ IN: Assumes that the gain is treated solely as a sale of the interest. The answer may change to the extent the sale is treated as an asset sale.

²⁷ ME: Yes for sales of partnership interest; no for sale of S corp interest. Generally, Maine imposes income tax on the disposition of partnership interest and not on disposition of an S Corp. interest.

²⁸ MI: Yes, tax is imposed and the gain is subject to allocation or apportionment. See MCL 206.661 and 663. The gain is apportioned differently if the pass-through entity is unitary for apportionment purposes with the taxpayer.

²⁹ MI: Yes, tax is imposed and the gain is subject to allocation or apportionment. See Part 1, Chapter 3 of the Income Tax Act, MCL 206.101 - 206.195.

³⁰ MI: Yes, tax is imposed and the gain is subject to allocation or apportionment. See MCL 206.661 and 663. The gain is apportioned differently if the pass-through entity is unitary for apportionment purposes with the taxpayer.

³¹ MI: Yes, tax is imposed and the gain is subject to allocation or apportionment. See Part 1, Chapter 3 of the Income Tax Act, MCL 206.101 - 206.195.

State ¹	Out-of-state corporation's managing ownership interest ²	Nonresident individual's managing ownership interest ³	Out-of-state corporation's limited ownership interest ⁴	Nonresident individual's limited ownership interest ⁵
North Carolina	Yes ³²	No Response ³³	Yes ³⁴	No Response ³⁵
North Dakota	Yes ³⁶	No ³⁷	Yes ³⁸	No ³⁹
Oklahoma	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes
Pennsylvania	Yes	No Response	Yes	No Response
Rhode Island	Yes	Yes	Yes	Yes
Tennessee	No ⁴⁰	Not Applicable	No	Not Applicable
Texas ⁴¹	No Response	No Response	No Response	No Response
Utah ⁴²	Yes	Yes	Yes	Yes
Vermont	Yes	Yes	Yes	Yes

³² NC: Gains that are deemed to be nonapportionable income pursuant to N.C. Gen. Stat. 105-130.4 may be subject to income tax in North Carolina if the gain is directly allocated to North Carolina.

³³ NC: North Carolina follows the federal income tax determination as to whether a transaction is treated as the sale of an asset or the sale of the partnership interest. If the sale of an ownership interest in the partnership is treated as a sale of the partnership's assets, then the individual partner must consider if the gain or loss from the sale of the partnership's assets is considered apportionable or nonapportionable income. (See 17 NCAC 06B.3527.)

³⁴ NC: Gains that are deemed to be nonapportionable income pursuant to N.C. Gen. Stat. 105-130.4 may be subject to income tax in North Carolina if the gain is directly allocated to North Carolina.

³⁵ NC: North Carolina follows the federal income tax determination as to whether a transaction is treated as the sale of an asset or the sale of the partnership interest. If the sale of an ownership interest in the partnership is treated as a sale of the partnership's assets, then the individual partner must consider if the gain or loss from the sale of the partnership's assets is considered apportionable or nonapportionable income. (See 17 NCAC 06B.3527.)

³⁶ ND: Response assumes the question's reference to "imposes tax" means gains are included in the corporation's apportionable tax base. Response assumes the gains are classified as apportionable business income.

³⁷ ND: Response assumes the individual's activity of owning and disposing of ownership interests is not itself a trade or business.

³⁸ ND: Response assumes the question's reference to "imposes tax" means gains are included in the corporation's apportionable tax base. Response assumes the gains are classified as apportionable business income.

³⁹ ND: Response assumes the individual's activity of owning and disposing of ownership interests is not itself a trade or business.

⁴⁰ TN: No- with GP exception. If the corp is not subject to F&E and the pass-thru is filing on its own then the corp has no tax liability. If the pass-thru entity is a general partnership, then the corp would be subject to F&E and any profit showing up on its federal return from the sale of the interest would be subject to F&E tax.

⁴¹ TX: The gain is included in total revenue and apportioned based on the location of payor. See Rule 3.591(e)(21)(B).

⁴² UT: Utah laws and rules as well as Commission decisions provide that an ownership interest in a pass through entity reflects the business of the holder of such interest to the extent of such interest. Therefore, the income/loss from the ownership interest is apportioned and the gain or loss on the sale of such an interest is viewed as the business of the holder of the ownership interest and is also apportionable income/loss.

State ¹	Out-of-state corporation's managing ownership interest ²	Nonresident individual's managing ownership interest ³	Out-of-state corporation's limited ownership interest ⁴	Nonresident individual's limited ownership interest ⁵
Virginia ⁴³	No Response ⁴⁴	No Response ⁴⁵	No Response ⁴⁶	No Response ⁴⁷
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	No	Yes	No

⁴³ VA: The term "disposition" is very broad and encompasses a number of different scenarios. The Virginia income tax treatment would depend, in part, on the federal income tax treatment of such income.

⁴⁴ VA: The corporate income tax is imposed on the Virginia taxable income of every foreign corporation having income from Virginia sources. Corporations that do business both within and without Virginia are generally required to allocate and apportion their income as set forth in Va. Code §58.1-406 *et seq.* Because the sale of a partnership interest is generally treated as the sale of an intangible asset, such sale would generally be sourced as required under Virginia law based on where the income-producing activity was incurred. Whether such sale is included in the numerator of the sales factor depends on the facts and circumstances. *See, e.g., P.D. 95-263.*

⁴⁵ VA: The Virginia taxable income of a nonresident individual is the amount bearing the same proportion to his Virginia taxable income, computed as though he were a resident, as the net amount of his income, gain, loss and deductions from Virginia sources bears to the net amount of his income, gain, loss and deductions from all sources. *See Va. Code §58.1-325.* Income from Virginia sources includes income from intangible personal property to the extent such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia. *See Va. Code §58.1-302.*

⁴⁶ VA: The corporate income tax is imposed on the Virginia taxable income of every foreign corporation having income from Virginia sources. Corporations that do business both within and without Virginia are generally required to allocate and apportion their income as set forth in Va. Code §58.1-406 *et seq.* Because the sale of a partnership interest is generally treated as the sale of an intangible asset, such sale would generally be sourced as required under Virginia law based on where the income-producing activity was incurred. Whether such sale is included in the numerator of the sales factor depends on the facts and circumstances. *See, e.g., P.D. 95-263.*

⁴⁷ VA: The Virginia taxable income of a nonresident individual is the amount bearing the same proportion to his Virginia taxable income, computed as though he were a resident, as the net amount of his income, gain, loss and deductions from Virginia sources bears to the net amount of his income, gain, loss and deductions from all sources. *See Va. Code §58.1-325.* Income from Virginia sources includes income from intangible personal property to the extent such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia. *See Va. Code §58.1-302.*

Treatment of Pass-Through Entities: Disposition of Pass-Through Entity Interest (Part 2 of 2)

State ¹	Out-of-state corporation's managing ownership interest and entity are a unitary business ²	Out-of-state corporation's managing ownership interest and entity are not a unitary business ³	Out-of-state corporation's limited ownership interest and entity are a unitary business ⁴	Out-of-state corporation's limited ownership interest and entity are not a unitary business ⁵
Alabama ⁶	Depends	Depends	Depends	Depends
Alaska	Yes	Yes	Yes	Yes
Arizona ⁷	No Response	No Response	No Response	No Response
Arkansas	No Response	No Response	No Response	No Response
California	Yes ⁸	Yes ⁹	Yes ¹⁰	Depends ¹¹
Colorado ¹²	Yes	Yes	Yes	No
Connecticut ¹³	No Response	No Response	No Response	No Response
Delaware	Yes	Yes	Yes	Yes
District of Columbia	Yes	Yes	Yes	No ¹⁴
Florida	Yes	Yes	Yes	Yes
Georgia	No Response	No Response	No Response	No Response
Hawaii ¹⁵	Yes	Yes	Yes	Yes

¹ The questions in this chart are all appearing for the first time in 2017. As a result, none of the responses are in bold.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation comprise a unitary business.

³ Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation are nonunitary.

⁴ Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation comprise a unitary business.

⁵ Your state imposes income tax on the gain recognized by the disposition of an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation are nonunitary.

⁶ AL: See *Prince v. State Department of Revenue*, No. 2080634.

⁷ AZ: See Arizona Corporate Tax Ruling CTR 94-3. If a corporation disposes of a partnership interest that is an integral part of its regular trade or business, the gain realized from the disposition of the partnership interest is business income. The gain realized from such a disposition is properly includable in the business income of the corporation subject to apportionment by use of the apportionment formula. If a corporation disposes of a partnership interest which produced nonbusiness income for the corporation or if the corporation's distributive share of the partnership's real and/or tangible property was removed from the corporation's property factor for a substantial period of time prior to the year of sale, the capital gain realized from the sale of the partnership interest is nonbusiness income.

⁸ CA: See RTC §25120(a); CCR §25120(c)(2).

⁹ CA: *Id.*

¹⁰ CA: *Id.*

¹¹ CA: See RTC §25120(a); RTC §25125(d); CCR §25120(c)(2).

¹² CO: See Department regulation 39-22-109(b)(xii) and (c). We understand the term "limited" to refer to a passive interest.

¹³ CT: A corporation is subject to tax on the gain to the extent that the gain is included in net income that is apportioned to this state.

¹⁴ DC: Yes when salary allowance or guarantee payment received.

¹⁵ HI: See §235-4, HRS and §18-235-22 to §18-235-38.5, HAR.

State ¹	Out-of-state corporation's managing ownership interest and corporation and entity are a unitary business ²	Out-of-state corporation's managing ownership interest and corporation and entity are not a unitary business ³	Out-of-state corporation's limited ownership interest and corporation and entity are a unitary business ⁴	Out-of-state corporation's limited ownership interest and corporation and entity are not a unitary business ⁵
Idaho ¹⁶	No Response	No Response	No Response	No Response
Illinois ¹⁷	No Response	No Response	No Response	No Response
Indiana ¹⁸	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes
Kansas	No Response	No Response	No Response	No Response
Kentucky	Yes	Depends	Yes	Depends
Louisiana	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends
Michigan ¹⁹	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Montana	Yes	Depends	Yes	Depends
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	No Response	No Response	No Response	No Response
New Jersey	Yes	Yes	Yes	No
New Mexico	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	Yes
North Carolina	Yes ²⁰	Yes ²¹	Yes ²²	No
North Dakota	Yes ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶

¹⁶ ID: The gain on a sale of an intangible.

¹⁷ IL: Not enough information.

¹⁸ IN: The income is taxed based on standard apportionment rules.

¹⁹ MI: Yes, tax is imposed and the gain is subject to allocation or apportionment. See MCL 206.661 and 663. The gain is apportioned differently if the pass-through entity is unitary for apportionment purposes with the taxpayer.

²⁰ NC: Gains that are deemed to be nonapportionable income pursuant to N.C. Gen. Stat. 105-130.4 may be subject to income tax in North Carolina if the gain is directly allocated to North Carolina.

²¹ NC: Gains that are deemed to be nonapportionable income pursuant to N.C. Gen. Stat. 105-130.4 may be subject to income tax in North Carolina if the gain is directly allocated to North Carolina.

²² NC: Gains that are deemed to be nonapportionable income pursuant to N.C. Gen. Stat. 105-130.4 may be subject to income tax in North Carolina if the gain is directly allocated to North Carolina.

²³ ND: Response assumes the question's reference to "imposes tax" means gains are included in the corporation's apportionable tax base.

²⁴ ND: NDCC Section 57-38.1-17.1 provides this income be directly "allocated" to the state based on the percentage of the partnership's cost of tangible property in the state at the time of the sale.

²⁵ ND: Response assumes the question's reference to "imposes tax" means gains are included in the corporation's apportionable tax base.

²⁶ ND: NDCC Section 57-38.1-17.1 provides this income be directly "allocated" to the state based on the percentage of the partnership's cost of tangible property in the state at the time of the sale.

State¹	Out-of-state corporation's managing ownership interest and corporation and entity are a unitary business²	Out-of-state corporation's managing ownership interest and corporation and entity are not a unitary business³	Out-of-state corporation's limited ownership interest and corporation and entity are a unitary business⁴	Out-of-state corporation's limited ownership interest and corporation and entity are not a unitary business⁵
Oklahoma	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes
Pennsylvania	Yes	No Response	Yes	No Response
Rhode Island	Yes	Yes	Yes	Yes
Tennessee	No ²⁷	No ²⁸	No	No
Texas ²⁹	No Response	No Response	No Response	No Response
Utah ³⁰	Yes	Yes	Yes	Yes
Vermont	No Response	Yes	No Response	Yes
Virginia ³¹	No Response	No Response	No Response	No Response
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes

²⁷ TN: If the corp is not subject to F&E and the pass-thru is filing on its own then the corp has no tax liability. If the pass-thru entity is a general partnership, then the corp would be subject to F&E and any profit showing up on its federal return from the sale of the interest would be subject to F&E tax.

²⁸ TN: *Id.*

²⁹ TX: The gain is included in total revenue and apportioned based on the location of payor. *See* Rule 3.591(e)(21)(B).

³⁰ UT: Utah laws and rules as well as Commission decisions provide that an ownership interest in a pass through entity reflects the business of the holder of such interest to the extent of such interest. Therefore, the income/loss from the ownership interest is apportioned and the gain or loss on the sale of such an interest is viewed as the business of the holder of the ownership interest and is also apportionable income/loss.

³¹ VA: The corporate income tax is imposed on the Virginia taxable income of every foreign corporation having income from Virginia sources. Corporations that do business both within and without Virginia are generally required to allocate and apportion their income as set forth in Va. Code §58.1-406 *et seq.* Because the sale of a partnership interest is generally treated as the sale of an intangible asset, such sale would generally be sourced as required under Virginia law based on where the income-producing activity was incurred. Whether such sale is included in the numerator of the sales factor depends on the facts and circumstances. *See, e.g.,* P.D. 95-263.

Treatment of Pass-Through Entities: Composite Returns and Withholding

State ¹	Requires composite returns for nonresident individuals ²	Requires composite returns for out-of-state corporations ³	Requires withholding of estimated tax on distributive share payments to non-resident individuals ⁴	Requires withholding of estimated tax on distributive share payments to out-of-state corporations ⁵	Requires filing of return for refund of over-withheld amount ⁶
Alabama	Yes	Yes	No ⁷	No ⁸	Yes
Alaska ⁹	No Response	No Response	No Response	No Response	No Response
Arizona ¹⁰	No	No	No	No	No
Arkansas	No	No	Yes	No	Yes
California	No	No	Depends	Depends	Yes
Colorado	No ¹¹	Yes	Yes ¹²	No	Yes
Connecticut	Yes	No	Yes	No	Yes
Delaware	No Response	No Response	No Response	No Response	Yes
District of Columbia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Florida ¹³	No	No	No	No	No
Georgia ¹⁴	No Response	No Response	No Response	No Response	No Response
Hawaii	No	No	Yes ¹⁵	Yes ¹⁶	Yes¹⁷

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state requires pass-through entities doing business in your state to file composite returns for nonresident individuals who are owners/members/partners.

³ Your state requires pass-through entities doing business in your state to file composite returns for out-of-state corporations that are owners/members/partners.

⁴ Your state requires pass-through entities doing business in your state to withhold estimated tax on distributive share payments made to nonresident individuals who are owners/members/partners.

⁵ Your state requires pass-through entities doing business in your state to withhold estimated tax on distributive share payments made to out-of-state corporations that are owners/members/partners.

⁶ **Your state requires nonresident owners/members/partners subject to withholding or composite return requirements to file a return to receive a refund of any amounts over-withheld.**

⁷ **AL: The composite payment computed will be computed on the distributive share of Alabama sourced income plus Alabama's share of any Guaranteed Payments for nonresident members. Estimated tax payments are not an available option for composite filers for Alabama purposes.**

⁸ **AL: *Id.***

⁹ AK: Alaska has no position at this time.

¹⁰ AZ: See ITR 13-2, composite returns are allowed, not required.

¹¹ CO: Nonresident individual shareholders of a subchapter S corporation or partnership can elect to agree to file a return and pay taxes and thereby relieve the pass-through entity from reporting and paying taxes on behalf of such persons.

¹² CO: *Id.*

¹³ FL: **Partnerships** do not pay tax in FL. A corporate partner determines its income from the partnership in accordance w. its percentage of its interest in the partnership and characterizes it in accordance with IRC subchapter K.

¹⁴ GA: See Regulation 560-7-8-.34.

¹⁵ HI: Withholding is required on nonresident individuals who are owners of an S-Corporation, unless a statement agreeing to pay taxes due is provided.

¹⁶ HI: *Id.*

¹⁷ **HI: *Id.***

State ¹	Requires composite returns for nonresident individuals ²	Requires composite returns for out-of-state corporations ³	Requires withholding of estimated tax on distributive share payments to non-resident individuals ⁴	Requires withholding of estimated tax on distributive share payments to out-of-state corporations ⁵	Requires filing of return for refund of over-withheld amount ⁶
Idaho ¹⁸	No	No	Yes	No	Yes
Illinois ¹⁹	No	No	Yes	Yes	Yes
Indiana	Yes	Yes	No	No	Yes
Iowa ²⁰	Depends	Depends	Yes	No	Yes
Kansas	No	No	No	Yes	No Response
Kentucky	No Response ²¹	No Response ²²	Depends ²³	Depends ²⁴	No ²⁵
Louisiana	No Response	No Response	No Response	No Response	No Response
Maine ²⁶	No	No	Yes	Yes	Yes ²⁷
Maryland	No	Not Applicable	Yes	Yes	Yes
Massachusetts	No ²⁸	No	Depends ²⁹	Depends	Yes
Michigan	No ³⁰	No	Yes ³¹	Yes ³²	No Response ³³
Minnesota	No	No	Yes	No	Yes
Mississippi	No	No	No	No	Yes
Missouri	No	No	No	No	Yes ³⁴

¹⁸ ID: Composite returns are available but not required. Any request for refund would have to be made by filing a return.

¹⁹ IL: See 35 ILCS 5/709.5.

²⁰ IA: See rules chapter 48 for composite returns. Rule 46.4(2)(8) requires withholding for income received by a nonresident partner or shareholder of a partnership doing business in Iowa.

²¹ KY: Allowed but not required. See KRS 141.206(16).

²² KY: *Id.*

²³ KY: See KRS 141.206(5)(a) and (7).

²⁴ KY: *Id.*

²⁵ KY: See 103 KAR 18:160, Section 4.

²⁶ ME: Composite returns are not required but are available.

²⁷ ME: Nonresident individuals may claim a refund by submitting a composite return.

²⁸ MA: A pass-through entity may file a composite return on behalf of qualified electing non-residents reporting and paying income tax on the non-residents' pro rata or distributive shares of Massachusetts source income of the pass-through entity. See 830 CMR 62.5A.1(12)(f).

²⁹ MA: A pass-through entity that maintains an office or engages in business in Massachusetts must deduct and withhold Massachusetts tax from the member's pro-rata share of the pass-through entity's Massachusetts-source income, unless: (1) the pass-through entity is exempt from this requirement under 830 CMR 62B.2.2(3)(b); or (2) the member is exempt from this requirement under 830 CMR 62B.2.2(3)(c). See 830 CMR 62.5A.1(3)(a).

³⁰ MI: A pass-through entity is permitted to file a composite return on behalf of participating nonresident individuals but is not required to do so.

³¹ MI: Yes, for pass-through entities' tax years beginning before July 1, 2017. Withholding for tax years after that date is no longer required; repealed by 2016 PA 158.

³² MI: Yes, for pass-through entities' tax years beginning before July 1, 2017. Withholding for tax years after that date is no longer required; repealed by 2016 PA 158. Flow-through entities that have more than \$200,000 of business income reasonably expected to accrue after allocation or apportionment shall withhold a tax based on the distributive share of business income of each member that is a corporation or that is a flow-through entity. Exemptions may apply. See MCL 206.703 and MCL 208.1500.

³³ MI: Individuals who participate on a composite return allow the pass-through entity to obtain a refund via the composite return, and the pass-through entity is responsible for refunding (or crediting internally) overpayments to owners. C corporation and individuals who opt not to participate on a composite return must each file an annual return to receive a refund of over-withholding.

³⁴ MO: See 12 CSR 10-2.190. If withholding is remitted to the Department of Revenue on behalf of a nonresident partner or S corporation shareholder who subsequently has no tax liability, the partnership or S corporation may file a claim for refund with the Department of Revenue to recover the amount remitted.

State ¹	Requires composite returns for nonresident individuals ²	Requires composite returns for out-of-state corporations ³	Requires withholding of estimated tax on distributive share payments to non-resident individuals ⁴	Requires withholding of estimated tax on distributive share payments to out-of-state corporations ⁵	Requires filing of return for refund of over-withheld amount ⁶
Montana	No ³⁵	No ³⁶	No ³⁷	No ³⁸	No Response
Nebraska	No	No	Yes	No	Yes
New Hampshire	No Response	No Response	No Response	No Response	No Response
New Jersey	No	No	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes
New York City	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Carolina	No	No	Yes ³⁹	Yes ⁴⁰	Yes
North Dakota	No	No	Yes ⁴¹	No	Yes
Oklahoma ⁴²	No Response ⁴³	No Response ⁴⁴	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	No	No	No	Yes
Rhode Island	No	No	Yes	Yes	Yes
Tennessee ⁴⁵	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Texas ⁴⁶	No Response	No Response	No Response	No Response	No Response
Utah	Yes ⁴⁷	Yes ⁴⁸	No	No	Yes
Vermont ⁴⁹	No Response	No Response	Yes	Yes	No Response

³⁵ MT: Composite tax is an election, but not required.

³⁶ MT: *Id.*

³⁷ MT: Withholding is required on distributive share of income and expense items, regardless of whether a payment was made to the owner/member/partner.

³⁸ MT: *Id.*

³⁹ NC: If a business conducted in this State...by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105 153.7. (*See* N.C. Gen. Stat. 105-154(d).)

⁴⁰ NC: Yes, unless the out-of-state corporation gives the partnership, a completed form NC-NPA for that tax year.

⁴¹ ND: Assumes "payments" refers to the federally distributive share of income, and not necessarily the payment / distribution made to the owner.

⁴² OK: *See* OAC 710:50-19-1 for general partnership filing guidance. *See* OAC 710:50-3-54 for income tax withholding for pass-through entities.

⁴³ OK: Allows.

⁴⁴ OK: *Id.*

⁴⁵ TN: Tennessee does not have a composite return. Tennessee only taxes at the partnership level.

⁴⁶ TX: In Texas, most "pass-through" entities are subject to the franchise tax and apply the same rules on combined reporting as other taxable entities. *See* Texas Tax Code **Section** 171.1014.

⁴⁷ UT: Generally, but a nonresident partner or shareholder may elect to be exempt from the withholding requirement if they file and pay Utah Individual Income tax by the due date of the pass through entity return.

⁴⁸ UT: Yes, for purposes of calculating a withholding tax that will be a credit on the corporation tax return.

⁴⁹ VT: Any pass-through entity with more than 50 nonresident owners/members/partners must file a composite return. *See* 32 VSA 5920.

State¹	Requires composite returns for nonresident individuals²	Requires composite returns for out-of-state corporations³	Requires withholding of estimated tax on distributive share payments to non-resident individuals⁴	Requires withholding of estimated tax on distributive share payments to out-of-state corporations⁵	Requires filing of return for refund of over-withheld amount⁶
Virginia	No ⁵⁰	No	Yes ⁵¹	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	No	Yes	Yes	Yes

⁵⁰ VA: Pass-through entities are permitted to file composite returns on behalf of qualified nonresident owners, but are not required to do so. *See* P.D. 15-240.

⁵¹ VA: Such withholding is not required where the pass-through entity or owner qualifies for an exemption from the pass-through entity withholding requirements. *See* P.D. 15-240.

Combined Reporting

Lack of Uniformity Among States Complicates Shift Towards Combined Reporting

With the continued enactment of mandatory combined reporting regimes, many states that impose a corporate income tax now require corporate parents to file a single return that includes the tax attributes of their subsidiaries. However, even among the states that require combined returns, there is a lack of uniformity.

Combined Reporting Requirements

Determining the composition of a combined group varies among the states. For some, the entities that must be included within a combined group are determined according to the jurisdiction's definition of a "unitary business." Other jurisdictions look to an "ownership threshold" to determine the entities that must be included.

States also use different rules with respect to water's edge and worldwide reporting for purposes of determining the composition of a combined group. The default method in some jurisdictions is water's edge (i.e., non-U.S. affiliates that conduct a certain amount of business outside the U.S. may be excluded from the combined return). The default method in other states is worldwide reporting (non-U.S. affiliates must be included in the combined return).

The method by which a combined group must compute tax also varies. Some jurisdictions compute the group's income tax liability on an aggregate basis and allow members to share tax credits and offset losses between one another. Other states require each member to compute income on an isolated basis and do not allow members to share credits or offset losses between each other.

Important differences exist with respect to the way in which the numerator of a combined group's sales factor is calculated. Some states include the in-state sales of a combined group member that lacks nexus with the jurisdiction in the numerator of the combined group's sales factor, but other states exclude such sales.

Survey Highlights Variety In States' Combined Reporting Methodologies

The states indicated the standard by which they determine which entities must be included within a combined group. The results varied, with 28 states responding that they use a unitary business definition, 16 states saying they have an ownership threshold, and eight states indicating they used another standard instead of, or in addition to, the "unitary business" definition or "ownership threshold."

We also surveyed states to determine which method of reporting is the default method for purposes of determining the composition of a combined group. The water's edge method was reported to be the default method in 16 states. By contrast, only five states indicated that worldwide reporting was the default method. Several states indicated that they allow combined groups to determine whether to report on a water's edge or worldwide basis.

In computing the tax base of a unitary group, eight states said they do not allow members to share credits. Of those eight, Arkansas, Hawaii, Idaho, Kansas and Montana responded that they also do not allow members to offset losses between one another.

We also asked states whether they used the *Joyce* or *Finnigan* approach when calculating the numerator of the sales factor for a combined group. The responses showed a fairly even split, with the *Joyce* approach being used slightly more by states than the *Finnigan* approach.

The states' responses to additional questions regarding their combined reporting regimes appear in the following charts.

For more information, see:
Corporate Income Tax Navigator at 8.

Combined Reporting: Composition of Group (Part 1 of 2)

State ¹	Unitary business definition ²	Ownership threshold ³	Other standard ⁴	Water's-edge reporting ⁵	Worldwide reporting ⁶
Alabama ⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes ⁸	No	Yes ⁹	Yes
Arizona	Yes	No	No	Yes	No
Arkansas ¹⁰	No	No	No	No	No
California	Yes	No ¹¹	No	No	Yes
Colorado ¹²	No	No	Yes	Yes	No
Connecticut ¹³	Yes	Yes	No	Yes	No ¹⁴
Delaware ¹⁵	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	Yes	Yes	No	No	No
Florida ¹⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia ¹⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	No	No	Yes	No
Idaho	Yes	Yes	No	No	Yes
Illinois ¹⁸	Yes	No	Yes	No	No
Indiana	Yes	Yes	No ¹⁹	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state uses a "unitary business" definition to determine which entities must be included within a combined group.

³ Your state looks to an "ownership threshold" to determine which entities must be included within a combined group.

⁴ Your state uses some other standard in addition to, or instead of, the "unitary business" definition or "ownership threshold."

⁵ Your state uses water's-edge reporting (nexus only, all unitary members) as the default method for determining the composition of a combined group.

⁶ Your state uses worldwide reporting (all unitary members) as the default method for determining the composition of a combined group.

⁷ AL: AL does not have any specific provision for combined reporting.

⁸ AK: "Control" is alternative test for oil and gas companies.

⁹ AK: Required for all companies except oil and gas companies which are required to use world-wide combination.

¹⁰ AR: Arkansas does not accept returns filed on a unitary combined basis.

¹¹ CA: See RTC §25105.

¹² CO: See 39-22-303(11), C.R.S. (Combined report required if corporations meet three of six tests).

¹³ CT: Starting with income year 2016, taxpayers are required to calculate their Corporation Business Tax on a mandatory unitary combined basis. Combined groups may elect to file on a worldwide or federal affiliated group basis. If no election is made, groups must file on a water's-edge basis.

¹⁴ CT: This is an elective option.

¹⁵ DE: Delaware does not have combined reporting.

¹⁶ FL: There is no combined reporting for Florida corporate income tax purposes.

¹⁷ GA: Georgia does not generally allow combined reporting.

¹⁸ IL: A combined group is defined in IITA Section 502(e) to include only corporations (other than S corporations) that are members of a unitary business group and taxable in Illinois. The term "unitary business group" is defined more broadly in IITA Section 1501(a)(27), but does not extend to any person with 80% or more of their business activity outside the United States.

¹⁹ IN: Financial Institutions Tax requires that all corporations be transacting business in Indiana.

State ¹	Unitary business definition ²	Ownership threshold ³	Other standard ⁴	Water's-edge reporting ⁵	Worldwide reporting ⁶
Iowa	No	No	Yes ²⁰	No	No
Kansas	Yes	No ²¹	Yes ²²	No ²³	No
Kentucky	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ²⁴	No Response	No Response	No Response	No Response	No Response
Maine	Yes	No	No	Yes ²⁵	No
Maryland ²⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ²⁷	Yes	Yes	Depends	Yes	No
Michigan	Yes ²⁸	Yes	Yes ²⁹	Yes ³⁰	No ³¹
Minnesota	Yes	No	No	No ³²	No ³³
Mississippi	No	Yes	No	No	No
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	Yes	No ³⁴	No	No	Yes
Nebraska	Yes	Yes	No	Yes	No ³⁵
New Hampshire	Yes	No	No	No Response	No
New Jersey ³⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	No	No	No
New York City	Yes	Yes	Yes³⁷	No Response	No
North Carolina ³⁸	Yes	Yes	Yes	No	No
North Dakota	Yes	Yes	No	No	Yes

²⁰ IA: Iowa only provides for nexus consolidated returns, including those companies in the same federal affiliated group that have nexus in Iowa. See Iowa Code section 422.37(2). Therefore, you must have 80% ownership to file an Iowa consolidated return, and only those companies in the federal group having nexus can be included in the consolidated Iowa return.

²¹ KS: In light of Kansas Supreme Court decision in *In Re Tax Appeal of Panhandle Eastern Pipe Line Co.*

²² KS: Kansas uses the dependency/contribution test to determine if two or more entities are unitary.

²³ KS: Kansas uses the domestic combination method, which can result in inclusion in the combined group of companies that are incorporated in the United States but do business abroad.

²⁴ LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.

²⁵ ME: The Maine unitary group may also include non-nexus members.

²⁶ MD: Maryland is not a Combined Filing State.

²⁷ MA: See 830 cmr 63.32B.2.

²⁸ MI: In addition to an ownership test, the CIT also requires that the entities have "business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other." See MCL 206.611(6).

²⁹ MI: The definition of a "unitary business group" includes an ownership or control test in addition to two relationship tests. See MCL 206.611.

³⁰ MI: Foreign entities and foreign operating entities as defined by MCL 206.607(3) are specifically excluded from inclusion in a unitary business group. See MCL 206.611(6).

³¹ MI: *Id.*

³² MN: Starting in 2013, foreign entities included in the federal consolidated return are included in the Minnesota unitary report except foreign corporations.

³³ MN: *Id.*

³⁴ MT: Must be owned > 50% to be included in unitary group - but not only factor in unitary determination.

³⁵ NE: The combination is subject to the IRC limitation.

³⁶ NJ: New Jersey is a separate reporting state, except for specific industries.

³⁷ NYC: Corporations that meet an ownership threshold may also elect to file a combined return.

³⁸ NC: Please see North Carolina General Assembly S.L. 2012-43.

State ¹	Unitary business definition ²	Ownership threshold ³	Other standard ⁴	Water's-edge reporting ⁵	Worldwide reporting ⁶
Oklahoma	No Response ³⁹	No Response	No Response	No Response	No Response
Oregon ⁴⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	Yes	Yes	No	Yes	No
Tennessee ⁴¹	Yes	No	No	Yes	No
Texas	Yes	Yes	No	No Response ⁴²	No Response ⁴³
Utah	Yes	No	Not Applicable	Yes ⁴⁴	No
Vermont	Yes	No Response ⁴⁵	No	Yes	No
Virginia ⁴⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes	No	No	Yes	No
Wisconsin	Yes	Yes	Yes ⁴⁷	Yes ⁴⁸	No

³⁹ OK: Combined return / separate nexus for each entity.

⁴⁰ OR: Oregon is a consolidated state and doesn't allow "combined reporting" as it's commonly defined.

⁴¹ TN: Tenn. Code Ann. Sec. 67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. Sec. 67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. Sec. 67-4-2006 to determine the excise tax base. The terms "unitary business" and "unitary group" are defined in Tenn. Code Ann. §67-4-2004(51).

⁴² TX: Per Rule 3.590(b)(2)(A), a combined group may not include a taxable entity that conducts business outside the U.S. if 80% or more of the taxable entity's property and payroll are assigned to locations outside the U.S. If either the property factor or payroll factor is zero, the denominator is one. The combined group may not include a taxable entity that conducts business outside the U.S. and has no property or payroll if 80% or more of the taxable entity's gross receipts are assigned to locations outside the U.S.

⁴³ TX: *Id.*

⁴⁴ UT: Utah requires waters edge combined reporting and inclusion of all unitary group members, whether or not doing business in the state.

⁴⁵ VT: 50% ownership is one of the factors. Additional considerations are described in Vermont regulation 1.5862(d)-4.

⁴⁶ VA: Virginia does not require or permit the filing of combined returns that include corporations that do not have nexus with the state. Since 1981, Virginia law has explicitly prohibited worldwide combined reporting.

⁴⁷ WI: A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules.

⁴⁸ WI: The factors that control a corporation's status under water's edge rules are: (1) whether the corporation is foreign or domestic, (2) whether the corporation is an 80/20 corporation, and (3) income sourced as foreign or U.S.

Combined Reporting: Composition of Group (Part 2 of 2)

State ¹	Exclude members w/ business activity outside U.S. of at least 80 percent ²	Include members w/ business activity outside U.S. of at least 80 percent ³	Entity in tax haven included in water's-edge group ⁴	Foreign entity included in water's-edge group ⁵	Prohibits including related entities using industry-specific apportionment formula ⁶	Requires including related entities using industry-specific apportionment formula ⁷	Offers elective provisions ⁸
Alabama ⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	No	No	Yes	Depends	No	Yes	No
Arizona	Yes ¹⁰	No	No	No	No	No	Yes ¹¹
Arkansas ¹²	No	No	No	No	No	No	No
California	No ¹³	Yes	No ¹⁴	No ¹⁵	No	Yes	Yes ¹⁶
Colorado ¹⁷	Yes	No	No	No ¹⁸	No	Yes	No
Connecticut ¹⁹	No Response ²⁰	No Response ²¹	Yes	No	No	Yes	Yes
Delaware ²²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No Response
District of Columbia	Yes	No	Yes	Yes	No	Yes	Yes
Florida ²³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state requires the exclusion from the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.

³ Your state requires the inclusion in the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.

⁴ Your state requires an entity doing business in a tax haven, as defined by your state, to be included within a water's-edge group.

⁵ Your state requires an entity that is foreign, but derives income from intangibles, to be included within a water's-edge group.

⁶ Your state prohibits including within the combined group related entities that use an industry-specific apportionment formula.

⁷ Your state requires including within the combined group related entities that use an industry-specific apportionment formula.

⁸ Your state offers elective provisions to a combined group, such as allowing the group to determine whether to be comprised on a water's-edge or a worldwide basis.

⁹ AL: AL does not have any specific provision for combined reporting.

¹⁰ AZ: Please see A.R.S. 43-1132(A), (B) and 43-1101(5).

¹¹ AZ: A.R.S. 43-947 allows affiliated groups of corporations to elect to file a consolidated return. An affiliated group may only file a consolidated return if the group properly elected or was required to file a consolidated federal return under 1501 of the Internal Revenue Code.

¹² AR: Arkansas does not accept returns filed on a unitary combined basis.

¹³ CA: Unless Water's Edge.

¹⁴ CA: No, but Subpart F income may result in partial inclusion of foreign entities.

¹⁵ CA: *Id.*

¹⁶ CA: Water's Edge; See RTC §§25110, 25114.

¹⁷ CO: See 39-22-303(11), C.R.S. (Combined report required if corporations meet three of six tests).

¹⁸ CO: Foreign entity will be required to file a separate return as a nexus taxpayer.

¹⁹ CT: Starting with income year 2016, taxpayers are required to calculate their Corporation Business Tax on a mandatory unitary combined basis. Combined groups may elect to file on a worldwide or federal affiliated group basis. If no election is made, groups must file on a water's-edge basis.

²⁰ CT: Members incorporated in the US that have 80% or more of their property and payroll outside of the US are excluded from the water's edge group.

²¹ CT: Members incorporated outside the US that have 20% or more of their property and payroll in the US.

²² DE: Delaware does not have combined reporting.

²³ FL: **There is no combined reporting for Florida corporate income tax purposes.**

State ¹	Exclude members w/ business activity outside U.S. of at least 80 percent ²	Include members w/ business activity outside U.S. of at least 80 percent ³	Entity in tax haven included in water's-edge group ⁴	Foreign entity included in water's-edge group ⁵	Prohibits including related entities using industry-specific apportionment formula ⁶	Requires including related entities using industry-specific apportionment formula ⁷	Offers elective provisions ⁸
Georgia ²⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	No	No	Yes	No	No
Idaho	No ²⁵	No ²⁶	No	No	No	Yes	Yes ²⁷
Illinois	Yes	No	No	No	Yes	No	No
Indiana	Yes	No	No	No	No	No	Yes ²⁸
Iowa	No	No	No	No	No	No	No
Kansas	No	Yes	No ²⁹	No	No	Yes ³⁰	No
Kentucky	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ³¹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	Yes	No	No	No	No	No
Maryland ³²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts ³³	Depends	Depends	No	Depends ³⁴	No	Yes	Yes
Michigan	Yes	No	Not Applicable ³⁵	No ³⁶	No	Yes ³⁷	No
Minnesota	No	No	No	No	Yes ³⁸	No	No
Mississippi	No	No	No	No	No	No	No
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No Response ³⁹	Yes ⁴⁰	Yes ⁴¹	Depends	No	Yes	Yes ⁴²

²⁴ GA: Georgia does not generally allow combined reporting.

²⁵ ID: See Idaho Code 63-3027(t), and Administrative Rules (IDAPA 35.01.01) 340-344.

²⁶ ID: *Id.*

²⁷ ID: See Idaho Code 63-3027B & 63-3027C.

²⁸ IN: The DOR must use water's edge; the taxpayer may elect to use worldwide.

²⁹ KS: No specific requirements for entities doing business in a tax haven.

³⁰ KS: Yes, if the entities using industry specific apportionment formula are otherwise unitary with other members of the combined group.

³¹ LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.

³² MD: Maryland is not a combined filing state.

³³ MA: See 830 cmr 63.32B.2.

³⁴ MA: See 830 cmr 63.32B.2(5)(b).

³⁵ MI: Michigan does not define "tax havens."

³⁶ MI: Unless the entity is a disregarded subsidiary of a domestic corporation.

³⁷ MI: Provided the entities satisfy the control and relationship tests of MCL 206.611(6).

³⁸ MN: Insurance companies and Mining companies are excluded from the combined group.

³⁹ MT: See water's edge provisions.

⁴⁰ MT: Yes, if no water's edge election.

⁴¹ MT: § 15-31-322, MCA, requires corporations in a unitary relationship with the taxpayer and incorporated in a tax haven to be included in the water's edge group.

⁴² MT: Water's edge election is available - election is effective for 3-year period. Election must be made on Montana Form WE-ELECT.

State ¹	Exclude members w/ business activity outside U.S. of at least 80 percent ²	Include members w/ business activity outside U.S. of at least 80 percent ³	Entity in tax haven included in water's-edge group ⁴	Foreign entity included in water's-edge group ⁵	Prohibits including related entities using industry-specific apportionment formula ⁶	Requires including related entities using industry-specific apportionment formula ⁷	Offers elective provisions ⁸
Nebraska	No	Yes	Not Applicable ⁴³	No	No Response ⁴⁴	No Response ⁴⁵	No
New Hampshire	Yes	No	No	No	No	Yes	No
New Jersey ⁴⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Yes	Not Applicable ⁴⁷	Not Applicable ⁴⁸	No	Yes	No
New York City	No	No	No	No	No	No	No Response
North Carolina ⁴⁹	Yes	No	No	No	No	Yes	No
North Dakota ⁵⁰	No	Yes	No	No	No	No	Yes ⁵¹
Oklahoma	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon ⁵²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	Yes	Yes	Yes	No	No	Yes ⁵³	No ⁵⁴
Tennessee ⁵⁵	No	Yes	No	No	No	Yes	No
Texas	No Response ⁵⁶	No Response ⁵⁷	No	No	No	No Response ⁵⁸	No

⁴³ NE: Nebraska does not define “doing business in a tax haven.”

⁴⁴ NE: Insurance companies may only be included in a combined group with other insurance companies. Other companies with an industry specific formula in the Regulations may be included in the combined group with other corporations that do not use the specific formula.

⁴⁵ NE: *Id.*

⁴⁶ NJ: New Jersey is a separate reporting state, except for specific industries.

⁴⁷ NM: New Mexico does not have a definition of a tax haven.

⁴⁸ NM: New Mexico does not have a Water's-Edge election option.

⁴⁹ NC: Please see North Carolina General Assembly S.L. 2012-43.

⁵⁰ ND: Responses are based on the default method of worldwide combined reporting, which would require inclusion of all unitary companies owned > 50%.

⁵¹ ND: North Dakota does allow a taxpayer to make a water's edge election for a unitary group; the election is binding for 5 years. For makeup of the water's edge group, see NDCC Chapter 57-38.4.

⁵² OR: Oregon is a consolidated state and doesn't allow “combined reporting” as it's commonly defined.

⁵³ RI: Rhode Island only allows single sales factor apportionment for all C corporations.

⁵⁴ RI: *Id.*

⁵⁵ TN: Tenn. Code Ann. Sec. 67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. Sec. 67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. Sec. 67-4-2006 to determine the excise tax base. The terms “unitary business” and “unitary group” are defined in Tenn. Code Ann. §67-4-2004(51).

⁵⁶ TX: Per Rule 3.590(b)(2)(A), a combined group may not include a taxable entity that conducts business outside the U.S. if 80% or more of the taxable entity's property and payroll are assigned to locations outside the U.S. If either the property factor or payroll factor is zero, the denominator is one. The combined group may not include a taxable entity that conducts business outside the U.S. and has no property or payroll if 80% or more of the taxable entity's gross receipts are assigned to locations outside the U.S.

⁵⁷ TX: *Id.*

⁵⁸ TX: An entity is included in a combined group if it meets the ownership and unitary provisions of Texas Tax Code Section 171.1014 and Rule 3.590.

State ¹	Exclude members w/ business activity outside U.S. of at least 80 percent ²	Include members w/ business activity outside U.S. of at least 80 percent ³	Entity in tax haven included in water's-edge group ⁴	Foreign entity included in water's-edge group ⁵	Prohibits including related entities using industry-specific apportionment formula ⁶	Requires including related entities using industry-specific apportionment formula ⁷	Offers elective provisions ⁸
Utah	No	Yes	No	No	No	Yes	Yes ⁵⁹
Vermont	No Response ⁶⁰	No	Not Applicable	No	Not Applicable	Not Applicable	No
Virginia ⁶¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes ⁶²	Yes ⁶³	Yes	Yes	No	No	Yes ⁶⁴
Wisconsin	Depends ⁶⁵	Depends ⁶⁶	No ⁶⁷	Depends ⁶⁸	No ⁶⁹	Yes ⁷⁰	Yes ⁷¹

⁵⁹ UT: Utah allows a combined group to make a binding worldwide election, revocable only with prior Commission approval based on the showing of a significant change in circumstances. Utah also allows a group of affiliated corporations, all of which are conducting business in Utah and none of which are unitary with any of the other corporations in the group making the election, to make an election to file a water's edge combined report.

⁶⁰ VT: Excludes overseas business when payroll and property are > 80% not in United States.

⁶¹ VA: Virginia does not require or permit the filing of combined returns that include corporations that do not have nexus with the state. Since 1981, Virginia law has explicitly prohibited worldwide combined reporting.

⁶² WV: Exclusion from the unitary business group of a member whose business activity outside the United States is 80 percent or more of the member's total business is mandatory only if the unitary business group, absent an election to affirmatively use worldwide reporting, uses water's-edge reporting by default. Inclusion in the unitary business group of a member whose business activity is 80 percent or more of the member's total business activity is mandatory only if the unitary business group elects to use worldwide reporting.

⁶³ WV: *Id.*

⁶⁴ WV: W. Va. Code §11-24-13f provides that water's-edge reporting is mandated absent affirmative election to report based on worldwide unitary combined reporting basis.

⁶⁵ WI: In general, a foreign 80/20 corporation is excluded from the Wisconsin combined group. A domestic 80/20 corporation is included only if it has U.S. source income that meets certain requirements.

⁶⁶ WI: *Id.*

⁶⁷ WI: Tax havens are not specifically addressed in the water's edge provisions. However, the department has broad authority to make adjustments to combined reports that represent an avoidance or evasion of tax.

⁶⁸ WI: The water's edge factors should be applied to the foreign entity and its income derived from intangibles to determine if the entity should be included in the Wisconsin combined group. The factors that control a corporation's status under water's edge rules are: (1) whether the corporation is foreign or domestic, (2) whether the corporation is an 80/20 corporation, and (3) income sourced as foreign or U.S.

⁶⁹ WI: An entity's type of apportionment formula is not used to determine whether it is included in a Wisconsin combined group. A corporation must file in a combined return if all of the following are true: (1) the corporation is in a commonly controlled group, (2) the corporation is engaged in a unitary business with one or more other corporations in that commonly controlled group or the group makes the controlled group election, and (3) the corporation is not excluded from the combined group under the water's edge rules.

⁷⁰ WI: *Id.*

⁷¹ WI: A commonly controlled group may forego the unitary business test by making the controlled group election.

Combined Reporting: Tax Base

State ¹	Computes liability on aggregate basis and allows members to share credits ²	Computes liability on aggregate basis and allows members to offset losses ³	Matching rule ⁴	Acceleration rule ⁵
Alabama ⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alaska	Yes	Yes	Yes	Yes
Arizona	Yes	Yes ⁷	Yes	Yes
Arkansas ⁸	No	No	No	No
California	No Response ⁹	No ¹⁰	Yes ¹¹	Yes
Colorado	Yes	Yes	Yes	Yes
Connecticut	Yes ¹²	Yes ¹³	Yes	Yes
Delaware ¹⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	Yes ¹⁵	Yes	Yes
Florida	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Georgia ¹⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	No	No
Idaho	No ¹⁷	No ¹⁸	Yes	Yes
Illinois	Yes	Yes	Yes	Yes
Indiana	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state computes the income tax liability of the group on an aggregate basis and allows members to share tax credits between one another.

³ Your state computes the income tax liability of the group on an aggregate basis and allows members to offset losses between one another.

⁴ Your state conforms to the "matching rule" under U.S. Treas. Regs. § 1.1502-13 (*i.e.*, intercompany transactions shall be taken into account as if the seller and buyer were divisions of a single corporation).

⁵ Your state conforms to the "acceleration rule" under U.S. Treas. Regs. § 1.1502-13 (*i.e.*, intercompany items shall be taken into account when the effect of treating the seller and buyer as divisions of a single corporation cannot be achieved, such as when either the seller or the buyer leaves the combined reporting group).

⁶ AL: AL does not have any specific provision for combined reporting.

⁷ AZ: Please see CTR 91-2 and AZ Admin Code R15-2D-302.

⁸ AR: Arkansas does not accept returns filed on a unitary combined basis.

⁹ CA: California does not compute franchise or income tax liability of the group on an aggregate basis. California does allow credit sharing between combined members (*see* RTC §23663).

¹⁰ CA: *See* 18 CCR §25106.5(c).

¹¹ CA: *See* 18 CCR §25106.5-1(a)(2).

¹² CT: Starting in 2016, taxpayers are required to calculate their tax on a combined unitary basis. A member may share its credits and NOLs with another member if both such members filed as part of the same return (either elective combined, elective unitary or mandatory unitary) in the year the credit was earned or the loss was generated.

¹³ CT: *Id.*

¹⁴ DE: Delaware does not have combined reporting.

¹⁵ DC: Assuming current losses and not NOLs.

¹⁶ GA: Georgia does not generally allow combined reporting.

¹⁷ ID: *See* IDAPA 35.01.01.200 & 365 - Each corporation in combined report calculates its own NOL & credits and is responsible for payment of its share of tax. Except for Idaho investment tax credit which can be shared. *See* IDAPA 35.01.01.711.

¹⁸ ID: *Id.*

State ¹	Computes liability on aggregate basis and allows members to share credits ²	Computes liability on aggregate basis and allows members to offset losses ³	Matching rule ⁴	Acceleration rule ⁵
Iowa ¹⁹	Yes	Yes	Yes	Yes
Kansas	No	No	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana ²⁰	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	Yes
Maryland ²¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Yes ²²	Yes ²³	Yes ²⁴	Yes ²⁵
Michigan	Yes	Yes	No	No
Minnesota	No Response ²⁶	No	No Response ²⁷	No Response ²⁸
Mississippi	No	Yes	No	No
Missouri	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Montana	No	No	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
New Hampshire	No Response ²⁹	No Response ³⁰	No	No
New Jersey ³¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	Yes	Yes
New York City	Yes	Yes	Yes	No Response
North Carolina ³²	Yes	Yes	Yes	Yes
North Dakota	No Response ³³	No	No Response ³⁴	No Response ³⁵
Oklahoma ³⁶	Yes	No Response	No Response	No Response

¹⁹ IA: Iowa only allows for nexus consolidated returns, including only companies having nexus in Iowa in the consolidated return.

²⁰ LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.

²¹ **MD: Maryland is not a Combined Filing State.**

²² MA: See 830 CMR 63.32B.2(9).

²³ MA: See 830 CMR 63.32B.2(8).

²⁴ MA: See 830 CMR 63.32B.2(6).

²⁵ MA: *Id.*

²⁶ MN: The Credit for Increasing Research Activities may be shared between members.

²⁷ MN: All intercompany transactions between entities included in the unitary business are eliminated. (See Minn. Stat. section 290.17, subd. 4(j)).

²⁸ MN: *Id.*

²⁹ NH: See N.H. Admin. Rules, Rev 306.

³⁰ NH: See N.H. Admin. Rules, Rev 302.09 and 302.10.

³¹ NJ: New Jersey is a separate reporting state, except for specific industries.

³² NC: Please see North Carolina General Assembly S.L. 2012-43.

³³ ND: Income tax and credits are computed separately for each nexus company; only two credits may be shared (research expense & wind energy credits).

³⁴ ND: To the extent that these affect federal taxable income, the answer would be yes.

³⁵ ND: *Id.*

³⁶ OK: See 68 O.S. §2367 and OAC 710:50-17-30 through 710:50-17-34.

State ¹	Computes liability on aggregate basis and allows members to share credits ²	Computes liability on aggregate basis and allows members to offset losses ³	Matching rule ⁴	Acceleration rule ⁵
Oregon ³⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island	Yes ³⁸	Yes ³⁹	Yes	Yes
Tennessee ⁴⁰	Yes	Yes	No	No
Texas	No Response ⁴¹	No Response ⁴²	No Response ⁴³	No Response ⁴⁴
Utah	Yes	Yes	Yes	Yes
Vermont	No	Yes ⁴⁵	Yes	Yes
Virginia ⁴⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable
West Virginia	Yes ⁴⁷	Yes ⁴⁸	Yes ⁴⁹	Yes ⁵⁰
Wisconsin	No ⁵¹	No ⁵²	Yes	Yes

³⁷ OR: Oregon is a consolidated state and doesn't allow "combined reporting" as it's commonly defined. However, Oregon does compute tax on an aggregate basis and allows sharing of tax credits for members included on the consolidated unitary return. Oregon also conforms to the matching and acceleration rules.

³⁸ RI: A tracing protocol must be used to track credits for inclusion and exclusion for credits generated prior to combined reporting.

³⁹ RI: *Id.*

⁴⁰ TN: Intercompany transactions are eliminated when filing combined returns for excise tax purposes. Tenn. Code Ann. §67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. §67-4-2014 to file excise tax returns a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. §67-4-2006 to determine the excise tax base. The terms "unitary business" and "unitary group" are defined in Tenn. Code Ann. §67-4-2004(51).

⁴¹ TX: Members share eligible Texas tax credits such as the Temporary Credit for Business Loss Carryforwards. The business loss carryforward does not follow the member to a separately filed report or another combined group, and if the member dissolves, terminates, or leaves the group, the business loss carryover of that member is no longer eligible for use. *See* Rule 3.594(c)(3).

⁴² TX: Texas Tax Code Section 171.1014(c) states that a combined group shall determine its total revenue by: (1) determining the total revenue of each of its members as if the member were an individual taxable entity; (2) adding the total revenues of the members together; and (3) subtracting to the extent included in total revenue, items of total revenue received from a member of a combined group.

⁴³ TX: A taxable entity that is part of a federal consolidated group shall compute its total revenue as if it had filed a separate return for federal income tax purposes. *See* Texas Tax Code Section 171.1011(d).

⁴⁴ TX: *Id.*

⁴⁵ VT: As described in Regulation 1.5862(d)-9(a).

⁴⁶ VA: Virginia has not adopted unitary combined reporting.

⁴⁷ WV: W.Va. Code §11-24-13(d) and W.Va. Code of State Regulations, 110.24.13e.1.c provides for the computation of tax liability of the group on an aggregate basis; W. Va. Code §11-24-13a(g) and §11-24-13c(b)(2) prohibit members of a combined group from sharing tax credits between one another; §11-24-13c(b)(2), however, does allow unused and unexpired economic development tax credits to be shared.

⁴⁸ WV: W.Va. Code §11-24-13c(b)(G) and W.Va. Code of State Regulations, 110.24.13c.1 allows net operating loss carryovers to be shared as deductions.

⁴⁹ WV: *See* W.Va. Code §11-24-13d(e) and W.Va. Code of State Regulations, 110.24.13d.1.a, 110.24.13d.1.b, 110.24.13d.1.e and 110.24.13d.1.f.

⁵⁰ WV: *See* W.Va. Code of State Regulations, 110.24.13d.1.b and 110.24.13d.1.f.

⁵¹ WI: A corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group reports its share of unitary income on the combined report which is filed by the designated agent of the unitary business. A corporation may share its research credits (except for the super research and development credit) with other members under certain circumstances.

⁵² WI: A corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group reports its share of unitary income on the combined report which is filed by the designated agent of the unitary business. A corporation may share its Wisconsin net business loss carryforwards with other members under certain circumstances.

Combined Reporting: Apportionment

State ¹	Finnigan approach ²	Joyce approach ³	Eliminates intercompany transactions ⁴
Alabama ⁵	Not Applicable	Not Applicable	Not Applicable
Alaska	No	Yes	Yes ⁶
Arizona	Yes	No	Yes ⁷
Arkansas ⁸	No	No	No
California	Yes ⁹	No	Yes
Colorado	No	Yes	Yes
Connecticut ¹⁰	Yes	No	Yes
Delaware ¹¹	Not Applicable	Not Applicable	Not Applicable
District of Columbia	No	Yes	Yes
Florida	Not Applicable	Not Applicable	Not Applicable
Georgia ¹²	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	No	Yes
Idaho	No	Yes	Yes
Illinois	No	Yes	Yes
Indiana	No	No	Yes
Iowa ¹³	No	Yes	Yes
Kansas	Yes ¹⁴	No	Yes ¹⁵

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Your state includes in the numerator of the combined group's sales factor the in-state sales of a no nexus combined group member notwithstanding Pub. L. No. 86-272 (i.e., Finnigan approach).

³ Your state does not include in the sales factor numerator sales by a no nexus combined group member for purposes of determining taxable income in your state for the other group members (i.e., Joyce approach).

⁴ Your state eliminates intercompany transactions (receipts, rents, etc.) from the apportionment factors.

⁵ AL: AL does not have any specific provision for combined reporting.

⁶ AK: Except that intercompany tariffs are included for oil and gas companies.

⁷ AZ: Please see AZ Adm Code R15-2D-405.

⁸ AR: Arkansas does not accept returns filed on a unitary combined basis.

⁹ CA: PL 86-272 is irrelevant to apportionment.

¹⁰ CT: Starting in 2016, taxpayers must calculate their tax on a combined unitary basis. The sales factor is determined using the Finnigan approach.

¹¹ DE: Delaware does not have combined reporting.

¹² GA: Georgia does not generally allow combined reporting.

¹³ IA: Iowa only allows a nexus consolidated return, whereby a consolidated return can be filed only including companies having nexus in Iowa. Iowa does not provide for combined reporting.

¹⁴ KS: See K.A.R. 92-12-112.

¹⁵ KS: *Id.*

State ¹	<i>Finnigan</i> approach ²	<i>Joyce</i> approach ³	Eliminates intercompany transactions ⁴
Kentucky	Not Applicable ¹⁶	Not Applicable	Yes
Louisiana ¹⁷	No Response	No Response	No Response
Maine	Yes	No	Yes
Maryland ¹⁸	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Yes ¹⁹	Yes	Yes ²⁰
Michigan	Yes	No	Yes
Minnesota ²¹	No Response	No Response	Yes
Mississippi ²²	No	Yes	Yes
Missouri	Not Applicable	Not Applicable	Not Applicable
Montana	No	Yes	Yes
Nebraska	No	Yes	Yes
New Hampshire	No	Yes	Yes
New Jersey ²³	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Yes	Yes
New York City	Yes	No	Yes
North Carolina	Yes	No	Yes
North Dakota	No	Yes	Yes
Oklahoma	No Response	No Response	No Response
Oregon ²⁴	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Not Applicable	Not Applicable	Not Applicable
Rhode Island	Yes	No	No
Tennessee ²⁵	Yes	No	Yes

¹⁶ KY: Applies to corporations filing an elective consolidated return in accordance with the provisions of Section 1502 of the Internal Revenue Code. All elective consolidated return filings expired in 2011, and once the election expired a taxpayer was required to file a separate return unless the taxpayer is a member of an affiliated group required to file a nexus consolidated return.

¹⁷ LA: Louisiana is a separate company reporting state, although the Secretary of Revenue allocates income and deductions among taxpayers in accordance with the provisions of La. R.S. 47:480 when the Secretary determines such allocation to be appropriate.

¹⁸ MD: Maryland is not a Combined Filing State.

¹⁹ MA: See 830 CMR 63.32B.2(7).

²⁰ MA: *Id.*

²¹ MN: Starting in 2013, Minn. Stat. Section 290.17, subd. 4 was amended to require that all sales of a unitary business made within Minnesota be included in the sales factor of a corporation that is both a member of the unitary business and subject to the corporate franchise tax. This is neither the *Finnigan* nor the *Joyce* approach.

²² MS: See Title 35, Part III, Subpart 08, Chapter 06.

²³ NJ: New Jersey is a separate reporting state, except for specific industries.

²⁴ OR: Oregon is a consolidated state and doesn't allow "combined reporting" as it's commonly defined. However, Oregon does use the *Joyce* approach and requires elimination of intercompany transactions amongst members of the consolidated unitary group included on the Oregon return.

²⁵ TN: Tenn. Code Ann. §67-4-2004(52) states that a "unitary business" or "unitary group" includes those entities that are engaged in a unitary business transacted wholly in, or in and out of Tennessee, even if some of the entities would not be subject to excise tax in Tennessee if considered apart from the unitary group. In Tennessee, unitary groups of financial institutions file as a single entity. Intercompany transactions are eliminated when filing combined returns for excise tax purposes. Tenn. Code Ann.

State¹	Finnigan approach²	Joyce approach³	Eliminates intercompany transactions⁴
Texas	No	Yes	Yes ²⁶
Utah	Yes	No	Yes
Vermont	No	Yes	No Response ²⁷
Virginia	No	No	No
West Virginia	No	Yes ²⁸	Yes
Wisconsin	Yes ²⁹	Not Applicable	Yes ³⁰

§67-4-2007(e)(1) states that, except for unitary groups of financial institutions, captive REIT affiliated groups, and business entities permitted or required by variance under Tenn. Code Ann. §67-4-2014 to file excise tax returns on a combined, consolidated or separate accounting basis, each taxpayer shall be considered a separate and single business entity and shall file on a separate entity basis even though it may have filed on a combined or consolidated basis for federal purposes. For Tennessee excise tax purposes, federal taxable income computed on a separate entity basis is the same as would have been computed had the federal return been filed on a separate entity basis and is subject to adjustments set forth in Tenn. Code Ann. §67-4-2006 to determine the excise tax base. The terms “unitary business” and “unitary group” are defined in Tenn. Code Ann. §67-4-2004(51). However, Tenn. Code Ann. §67-4-2007(d) permits LLCs whose single member is a corporation to be disregarded for Tennessee excise tax purposes.

²⁶ TX: However, per Texas Tax Code Section 171.1055(b), the numerator of the apportionment factor will include certain sales of tangible personal property made to third party purchasers if the tangible personal property is ultimately delivered to a purchaser in Texas without substantial modification. For example, drop shipments made from a Texas location to a Texas purchaser would be included in Texas receipts based on the amount billed to the third party purchaser if the seller is a member of the combined group and the seller does not have nexus.

²⁷ VT: Defers intercompany transaction income until the object is resold in some cases (see Reg. 1.5862(d) - 7(e)(5)).

²⁸ WV: See W.Va. Code of State Regulations, 110.24.7.7.d.2.

²⁹ WI: A Wisconsin combined group will not have no-nexus members because all members are considered as doing business in the state if any one member is doing business in the state. Therefore, all in-state sales will be included in the members' sales numerators.

³⁰ WI: *Id.*

Non-U.S. Entities

Treatment of Non-U.S. Entities Varies Among States

At the federal level, non-U.S. entities can rely on treaty provisions to offer guidance on the tax consequences of most types of transactions. Under bilateral tax treaties, a non-U.S. company generally is not subject to U.S. tax on business income derived in the United States unless the income is attributable to a permanent establishment in the United States.

At the state level, whether a non-U.S. entity is subject to tax depends on the entity having nexus with the particular state. Most states adhere to an economic nexus rationale for income taxes, which does not require a physical presence.

Another question is whether a state extends the protection afforded under Pub. L. No. 86-272 to non-U.S. entities. Pub. L. No. 86-272 prohibits the imposition of state income-based taxes against businesses engaged in the sale of tangible personal property whose activities in the taxing state are limited to the solicitation of orders. This protection applies to interstate commerce but not to foreign commerce.

Water's Edge Reporting

If nexus with a state is established, the non-U.S. entity's actual tax liability would depend on the state's starting point for computing income tax. The starting point in "water's edge" states is taxable income within the United States. Under this method, if a state starts its computation with federal taxable income, assuming the state does not require an addition of treaty-exempt income, then the company's tax liability would be zero.

But not all non-U.S. entities qualify for this treatment because of the "80/20 rule," which is the main method states use to determine if a non-U.S. corporation should be included in a combined group for water's edge purposes. Under this rule, a state that requires or permits the filing of a water's edge combined return will exclude a non-U.S. entity, whose income apportionment percentage outside of the United States is 80 percent or more, from the combined return. However, the method used to determine if a non-U.S. based company has met this standard varies by state.

Survey Addresses Tax Treatment of Non-U.S. Entities

This year we asked states if they apply the same nexus standard to non-U.S. entities as they do to domestic entities. In response to this question, 41 jurisdictions answered "yes," with Vermont being the only state to indicate that it does not apply the same nexus standard to domestic and non-U.S. entities. In responding to the question regarding Pub. L. No. 86-272 protections, 28 states said they apply this protection to foreign commerce and 12 states said they would not extend the protection.

When asked whether they permit federal income tax treaty exemptions or other limits to control liability for state income taxation, 15 states said "no." As a result, a non-U.S. company can achieve nexus in these states even if it lacks a permanent establishment. Most of these states indicated that a non-U.S. entity would need to complete a pro forma federal tax return in order to calculate its state tax liability.

In a state that begins its computation with worldwide income, a non-U.S. entity could have state tax liability even if it had no federal income tax liability. Twelve states indicated that they impose tax on worldwide income. However, only seven states indicated they use a starting point other than federal taxable income in calculating the taxable income of a non-U.S. entity. Moreover, 44 percent of participating states indicated that a non-U.S. entity would be required to complete a pro forma federal tax return in order to calculate their state tax liability.

We asked states whether they used federal source rules under I.R.C. §861 *et seq.* to ascertain the source of income when determining the taxability of nonbusiness income. Seventeen states indicated that they follow the federal source rules. In addition, we asked states if they conformed to the federal treatment of effectively connected income under I.R.C. §§881 and 882. Only eight states indicated that they did not conform to the federal rules.

The states' responses to additional questions about the state tax liability of non-U.S. entities appear in the charts on the following pages.

For more information, see:

Corporate Income Tax Navigator at 2.1.5.

Corporate Income Tax Navigator at 8.1.1.4.

Portfolio 1410-2nd: Limitations on States' Jurisdiction to Impose Net Income Based Taxes at 1410.09.

Tax Treatment of Non-U.S. Entities (Part 1 of 2)

State ¹	Same nexus standard as domestic entities ²	Pub. L. No. 86-272 protections ³	Permanent establishment ⁴	Pro forma fed. tax return ⁵	Starting point other than federal taxable income ⁶	Worldwide taxable income ⁷
Alabama	Yes	No	Yes	No	No	No
Alaska	Yes	Yes	No	Yes	No Response ⁸	Yes ⁹
Arizona ¹⁰	Yes	Yes	Yes	No	No	No
Arkansas	Yes	Yes	No ¹¹	Yes	No	No
California	Yes	No	No	No Response ¹²	No Response ¹³	Depends ¹⁴
Colorado	Yes	No	Yes	Yes	No	No
Connecticut	Yes	No Response ¹⁵	No Response ¹⁶	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹
Delaware	Yes	No	Yes	Yes	No	No
District of Columbia	Yes	No	Yes	Not Applicable	Not Applicable	Yes ²⁰

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² **Does your state apply the same nexus standard to non-U.S. entities as it does to domestic entities?**

³ Does your state extend the protections under Pub. L. No. 86-272 to business entities that are not organized under the law of a state or local taxing jurisdiction in the U.S. (i.e., foreign corporations not eligible for Pub. L. No. 86-272 protections)?

⁴ Does your state, when determining the state taxable income of a non-U.S. entity, permit federal income tax treaty exemptions or other limits to control liability for state income taxation (i.e., the non-U.S. entity will only have state taxable income if it has a "permanent establishment" in the U.S. and reports income on Federal Form 1120-F)?

⁵ Does your state require a non-U.S. entity that is not subject to federal income tax, but subject to your state's income-based tax, to compute your state's tax by first completing a "pro forma" federal tax return or computation of federal income?

⁶ Does your state require a non-U.S. entity that is not subject to federal tax, but subject to your state's income-based tax, to use a starting point in determining state taxable income other than federal taxable income (i.e., \$0)?

⁷ Does your state impose tax on a non-U.S. entity's apportioned worldwide taxable income?

⁸ AK: Taxpayer may elect to report the income of foreign entities using book income.

⁹ AK: Tax is imposed if foreign entity has nexus.

¹⁰ AZ: Arizona starts with federal taxable income. Therefore, if a foreign entities federal taxable income is zero, then Arizona's starting point is zero. However, if the foreign company has nexus in Arizona, even if they have zero federal taxable income, they will still be required to file a return and pay the \$50 minimum tax.

¹¹ AR: Arkansas does not recognize foreign tax treaties and nexus for foreign corporations is determined the same as for domestic corporations. Public Law 86-272 is the nexus standard for Arkansas.

¹² CA: Not required, but may be helpful. California generally calculates taxable income as provided by the Internal Revenue Code. However, there are small differences. There are two ways to complete Form 100 (calculating California taxable income): (a) the federal reconciliation method, or (b) the California computation method. Instructions to calculate under these two methods are found under the "Form 100" booklet.

¹³ CA: Not required. Like the previous question, instructions to calculate the starting point for taxable income depends on which method each taxpayer chooses.

¹⁴ CA: If taxpayers do not file a water's edge election, then all business income is apportionable. Under the water's-edge method, taxpayers determine their income derived from or attributable to California by including only the income and factors of specific affiliated entities. Rules determining what income is taxable in California are found under RTC §25110 and the regulations thereunder.

¹⁵ CT: DRS has no published position.

¹⁶ CT: See Conn. Gen. Stat. §12-216a and IP 2010(29.1).

¹⁷ CT: *Id.*

¹⁸ CT: *Id.*

¹⁹ CT: *Id.*

²⁰ DC: If worldwide election is made.

State ¹	Same nexus standard as domestic entities ²	Pub. L. No. 86-272 protections ³	Permanent establishment ⁴	Pro forma fed. tax return ⁵	Starting point other than federal taxable income ⁶	Worldwide taxable income ⁷
Florida	Yes	Yes	Yes ²¹	No	Yes	No
Georgia	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	Yes ²²	Yes ²³	No ²⁴	No	No	No ²⁵
Idaho	Yes	No Response ²⁶	No Response ²⁷	No Response ²⁸	No Response ²⁹	No Response ³⁰
Illinois	Yes	Yes	No Response ³¹	No	No	No
Indiana	Yes	Yes	Yes ³²	Not Applicable ³³	Not Applicable	No
Iowa	Yes	Yes	Yes ³⁴	No	No	No
Kansas	No Response	No	Yes	Yes	Yes	No
Kentucky	Yes	Yes	No	Yes	No	No
Louisiana	Yes	Yes	Yes	No	No	No Response ³⁵
Maine	Yes	Yes	Yes	No	No	No
Maryland	Yes	Yes	Yes	No	No	No
Massachusetts ³⁶	Yes	Yes	Depends	Yes	No	Yes
Michigan	Yes	Yes	No ³⁷	Yes	No	No
Minnesota	Yes	No	No ³⁸	Yes	No	Yes
Mississippi	Yes	No	No ³⁹	Yes	Yes	No
Missouri	Yes	Yes	Yes	No	Not Applicable	Yes
Montana	Yes	Yes	Depends	Depends	Depends	Yes

²¹ FL: If the taxpayer must file federally to claim the treaty exemption, they must also file in Florida.

²² HI: See Section 18-235-4-05(c) and 18-235-4-05(e), Hawaii Administrative Rules.

²³ HI: *Id.*

²⁴ HI: *Id.*

²⁵ HI: *Id.*

²⁶ ID: The Tax Commission has made no ruling on this fact situation.

²⁷ ID: *Id.*

²⁸ ID: *Id.*

²⁹ ID: *Id.*

³⁰ ID: Idaho is a worldwide combined reporting state; thus, if the foreign entity is part of the unitary group, it would be included within the worldwide combined report. If the foreign entity is transacting business within Idaho, it would be required to report its share of the income apportioned to Idaho.

³¹ IL: The starting point in the computation of Illinois base income of a corporation is federal taxable income. Therefore, in general, items of income and deduction that are included in the computation of federal taxable income are included in the computation of Illinois base income, while items of income that are excluded in computing federal taxable income, or deductions that are denied in computing federal taxable income, are likewise excluded or denied in the computation of Illinois base income.

³² IN: If the starting point for federal taxable income is zero, Indiana will follow suit. If federal taxable income is somehow required to be computed, then Indiana follows the as-computed federal taxable income.

³³ IN: *Id.*

³⁴ IA: The starting point for Iowa corporation income tax is federal taxable income as properly computed. A corporation must have income subject to federal income tax in order to require the filing of an Iowa return. In the absence of federal taxable income, there can be no Iowa taxable income. This is noted in the following ruling: <http://itr.idr.iowa.gov/mx/Browse/OpenFile/1396>.

³⁵ LA: Other than specific modifications to federal income and deduction items (none specifically related to non-U.S. entities), Louisiana (LA) requires that the same items that are required/allowed in computing federal taxable income be used in determining net income. LA net income is then determined by applying LA's allocation and apportionment provisions.

³⁶ MA: See TIR 10-16, 08-11; DD 01-8, LRs 00-5, 00-11 and Schedule U-M and Instructions.

³⁷ MI: See MCL 206.625(2).

³⁸ MN: A "pro forma" federal tax return is required to determine federal taxable income excluding tax treaty exemptions.

³⁹ MS: The State's apportionment method is used.

State ¹	Same nexus standard as domestic entities ²	Pub. L. No. 86-272 protections ³	Permanent establishment ⁴	Pro forma fed. tax return ⁵	Starting point other than federal taxable income ⁶	Worldwide taxable income ⁷
Nebraska	Yes	Yes	Yes	Not Applicable	Not Applicable	No
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Yes	No	No ⁴⁰	Yes	No	Yes
New Mexico	Yes	Yes	Yes	No	No	Yes
New York City	Yes	Yes	No	No Response	No Response	No Response
North Carolina	Yes	Yes	No ⁴¹	Yes ⁴²	No ⁴³	No
North Dakota	Yes	Yes	No ⁴⁴	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	No	No Response	No Response
Oregon	Yes	Yes	No ⁴⁵	Yes	Yes	No
Pennsylvania	Yes	Yes	No ⁴⁶	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	No	Yes
Tennessee	Yes	No ⁴⁷	Yes ⁴⁸	Yes ⁴⁹	No ⁵⁰	No ⁵¹
Texas	Yes	No ⁵²	No Response ⁵³	No	No Response ⁵⁴	No Response ⁵⁵
Utah	Yes	Yes	No	Yes ⁵⁶	No	Yes ⁵⁷
Vermont	No	No Response	Yes	Not Applicable	Not Applicable	No Response

⁴⁰ NJ: Tax is computed as if no treaty exemptions existed.

⁴¹ NC: G.S. 105-130.3 imposes a tax on the State net income of every C Corporation doing business in this state. G.S. 105-130.2(15) defines "State net income" as "[T]he taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4."

⁴² NC: *Id.*

⁴³ NC: *Id.*

⁴⁴ ND: Must prepare a Pro Forma 1120.

⁴⁵ OR: Non-US corporation taxes are addressed in ORS 317.010 and Administrative Rule. Specifically from OAR 150-317.010(10)-(B), "(3) Oregon taxable income is determined by calculating the corporation's federal taxable income as if the corporation was subject to federal income taxes and making certain modifications as provided by Oregon law. As provided under ORS 317.625, income from outside the United States is accounted for in the computation of Oregon taxable income without regard to IRC sections 861 to 864. Income classified as income from outside the United States and excluded from federal taxable income must be added to the federal taxable income calculation required by this rule as an "other addition."

(4) Oregon has adopted the federal IRC provisions for computing taxable income, but did not adopt the federal provisions that define exempt corporations. Oregon law in ORS 317.080 lists those corporations that are exempt from Oregon corporate taxes."

⁴⁶ PA: **The income that would have been reported for Federal income tax purposes but for the treaty.**

⁴⁷ TN: Tennessee has very few non-U.S. entities with franchise, excise tax nexus. Generally, Tennessee follows the "waters edge" approach when determining income subject to taxation. This usually means that the starting point is federal form 1120F income. Nonbusiness income would be determined by applying Tenn. R. & Regs. 1320-6-1-.23, Tenn. Code Ann. §§67-4-2004(33), and 67-4-2011.

⁴⁸ TN: *Id.*

⁴⁹ TN: *Id.*

⁵⁰ TN: *Id.*

⁵¹ TN: *Id.*

⁵² TX: Pub. L. No. 86-272 does not apply to the Texas franchise tax. *See* Rule 3.586(e).

⁵³ TX: The franchise tax base is taxable margin, not taxable income. Total revenue, a component of margin, is specifically defined in **Texas Tax Code Section 171.1011** and is tied to the amounts entered on specific lines from the federal return, to the extent the amount entered complies with federal income tax law, minus statutory exclusions.

⁵⁴ TX: *Id.*

⁵⁵ TX: *Id.*

⁵⁶ UT: This would be applicable where a worldwide combined election is made and the income and apportionment factors of foreign corporations are therefore included in the combination.

⁵⁷ UT: *Id.*

State ¹	Same nexus standard as domestic entities ²	Pub. L. No. 86-272 protections ³	Permanent establishment ⁴	Pro forma fed. tax return ⁵	Starting point other than federal taxable income ⁶	Worldwide taxable income ⁷
Virginia	Yes	Yes ⁵⁸	Yes	Not Applicable	Not Applicable	No
West Virginia	Yes	Yes	Yes ⁵⁹	Yes	Yes	Yes ⁶⁰
Wisconsin	Yes ⁶¹	No	Yes	Yes	No	No ⁶²

⁵⁸ VA: See 23 VAC 10-120-120.

⁵⁹ WV: See W.Va. Code § 11-24-13f(a)(5).

⁶⁰ WV: See W.Va. Code § 11-24-13f(a).

⁶¹ WI: Yes, however Wisconsin follows federal tax treaties.

⁶² WI: Tax is imposed on all income that is effectively connected with the conduct of a trade or business in the United States and any additional U.S. source income.

Tax Treatment of Non-U.S. Entities (Part 2 of 2)

State ¹	Federal source rules for nonbusiness income ²	Federal source rules for non-U.S. income of 80-20 corporation ³	U.S. branch of non-U.S. entity ⁴	Non-U.S. entity not subject to federal tax ⁵	Federal deductions denied ⁶	Franchise tax or other nonincome-based tax ⁷	Conforms to federal treatment of effectively connected income ⁸
Alabama	Yes	Not Applicable	Yes	Yes	Yes	Yes	Yes
Alaska	No	No	No	Yes ⁹	No Response ¹⁰	Yes ¹¹	No
Arizona ¹²	Yes ¹³	Yes ¹⁴	No ¹⁵	No	Yes ¹⁶	No	Yes
Arkansas	No ¹⁷	Not Applicable	Yes	Yes	No	Yes	No
California	No	No	No ¹⁸	Depends ¹⁹	No	Depends ²⁰	No
Colorado	No	No Response	No Response	Yes	No	Not Applicable	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Does your state determine the source of income for purposes of determining taxability of nonbusiness income by using the federal source rules under I.R.C. §861 *et seq.*?

³ Does your state use federal source rules to determine the non-U.S. income of an 80-20 corporation for water's edge or other purposes?

⁴ Does your state impose tax only on the income of the U.S. branch of a non-U.S. entity?

⁵ Does your state impose income tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?

⁶ If a foreign business does not file a federal return within a specified period of time after its due date (usually 18 months after the original due date), federal deductions are denied. Does the state follow a similar rule?

⁷ Does your state impose franchise tax or other nonincome-based tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?

⁸ **Does your state conform to the federal treatment of effectively connected income under I.R.C. §§881 and 882?**

⁹ AK: Tax is imposed if foreign entity has nexus.

¹⁰ AK: Alaska has no position at this time.

¹¹ AK: Tax is imposed if foreign entity has nexus.

¹² AZ: Arizona starts with federal taxable income. Therefore, if a foreign entities federal taxable income is zero, then Arizona's starting point is zero. However, if the foreign company has nexus in Arizona, even if they have zero federal taxable income, they will still be required to file a return and pay the \$50 minimum tax.

¹³ AZ: Arizona adopts the provisions of the federal internal revenue code relating to the measurement of taxable income for corporations so the federal sourcing rules are relevant since we adopt I.R.C. 861, but also see CTP 02-1 and A.R.S. 43-1101(5)(b) for more information.

¹⁴ AZ: *Id.*

¹⁵ AZ: If the affiliated group of corporations (including foreign companies) elect to file consolidated the foreign entity would be subject to Arizona corporation income tax.

¹⁶ AZ: The federal deductions are taken prior to arriving at federal taxable income which is the starting point for Arizona corporations. Therefore if the deductions are disallowed for federal purposes they would similarly be disallowed for Arizona purposes since the deductions would not be included in federal taxable income.

¹⁷ AR: Arkansas does not use federal source rules for determining sourcing of nonbusiness income. It uses ACA 26-51-704 through 708.

¹⁸ CA: If taxpayers do not file a water's edge election, then all business income is apportionable. Under the water's-edge method, taxpayers determine their income derived from or attributable to California by including only the income and factors of specific affiliated entities. Rules determining what income is taxable in California are found under RTC §25110 and the regulations thereunder.

¹⁹ CA: *Id.*

²⁰ CA: *Id.*

State ¹	Federal source rules for nonbusiness income ²	Federal source rules for non-U.S. income of 80-20 corporation ³	U.S. branch of non-U.S. entity ⁴	Non-U.S. entity not subject to federal tax ⁵	Federal deductions denied ⁶	Franchise tax or other nonincome-based tax ⁷	Conforms to federal treatment of effectively connected income ⁸
Connecticut	No Response ²¹	No Response ²²	No Response ²³	No Response ²⁴	No Response ²⁵	No Response ²⁶	No Response ²⁷
Delaware	Yes	Yes	Yes	Yes	Yes	No Response	Yes
District of Columbia	Yes	Yes	Yes	No	No	No	Yes
Florida	No ²⁸	Yes	Yes ²⁹	Yes	Yes ³⁰	Yes ³¹	Yes
Georgia	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	No ³²	No ³³	No ³⁴	Yes ³⁵	No	Yes	No
Idaho	No ³⁶	No	No Response ³⁷	No Response ³⁸	No Response ³⁹	No Response ⁴⁰	No Response ⁴¹

²¹ CT: DRS has no published position.

²² CT: Only property and payroll are considered in the 80/20 rules.

²³ CT: See Conn. Gen. Stat. § 12-216a and IP 2010(29.1).

²⁴ CT: *Id.*

²⁵ CT: DRS has no published position.

²⁶ CT: See Conn. Gen. Stat. § 12-216a and IP 2010(29.1).

²⁷ **CT: DRS has no published position.**

²⁸ FL: See Rule 12C-1.016, F.A.C. See also ss. 220.03(1)(r), 220.16, F.S.

²⁹ FL: Florida starts with federal income.

³⁰ FL: *Id.*

³¹ **FL: Florida's franchise tax is measured by net income.**

³² HI: See Sections 235-21 to 235-28, Hawaii Revised Statutes.

³³ HI: See Section 18-235-38.5-02, Hawaii Administrative Rules.

³⁴ HI: See Section 18-235-4-05(c) and 18-235-4-05(e), Hawaii Administrative Rules.

³⁵ HI: *Id.*

³⁶ ID: Idaho Code sections 63-3027(d) through (h) govern the allocation of nonbusiness income, which is basically the same as the UDITPA.

³⁷ ID: Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity that has a U.S. branch is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. If the foreign entity is transacting business within Idaho, it would be responsible for the Idaho tax on its share of the income apportioned to Idaho.

³⁸ ID: Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. However, if the foreign entity has no income connected to the United States and is simply filing a protective federal form 1120F, the protective 1120F would not be included within Idaho's Waters-edge combined report for a taxable year until such time as it is determined at the federal level that it had income connected to the United States for that taxable year.

³⁹ ID: The Tax Commission has made no ruling on this fact situation.

⁴⁰ ID: Idaho does have a franchise tax, the calculation of which is the same as it is under Idaho's income tax. The taxpayer would only be subject to the income tax or the franchise tax, not both. Idaho is a combined reporting state with a worldwide combined reporting requirement or upon the election of the taxpayer a water's-edge combined report. If the foreign entity is part of a unitary group that is transacting business within Idaho, the foreign entity would be included within a worldwide combined report or the foreign entity's federal 1120F if a water's-edge election is made. However, if the foreign entity has no income connected to the United States and is simply filing a protective federal form 1120F, the protective 1120F would not be included within Idaho's Waters-edge combined report for a taxable year until such time as it is determined at the federal level that it had income connected to the United States for that taxable year.

⁴¹ **ID: The Tax Commission has made no ruling on this fact situation.**

State ¹	Federal source rules for nonbusiness income ²	Federal source rules for non-U.S. income of 80-20 corporation ³	U.S. branch of non-U.S. entity ⁴	Non-U.S. entity not subject to federal tax ⁵	Federal deductions denied ⁶	Franchise tax or other nonincome-based tax ⁷	Conforms to federal treatment of effectively connected income ⁸
Illinois	No Response ⁴²	No Response ⁴³	No Response ⁴⁴	No Response ⁴⁵	No Response ⁴⁶	No Response ⁴⁷	No Response ⁴⁸
Indiana	Yes	Yes	No	No	Yes	No	Yes
Iowa	Yes	Yes	Yes	No	Yes	No	Yes
Kansas	No	Not Applicable	Yes	Yes	No	No	No Response
Kentucky	Yes	Yes	Yes	Yes	Yes ⁴⁹	Yes	Yes
Louisiana ⁵⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	No	Yes	No	Yes
Maryland	No ⁵¹	No	Yes	No	Yes ⁵²	No	Yes
Massachusetts ⁵³	Depends	Yes	Depends	Depends	No	Yes	Yes ⁵⁴
Michigan	No ⁵⁵	No	No	Yes	Yes ⁵⁶	No	Yes ⁵⁷
Minnesota	No ⁵⁸	No	No	Yes	Yes ⁵⁹	No	No
Mississippi	Yes	No	Yes	Yes	No ⁶⁰	Yes	Yes
Missouri	No	No	No	Yes	No ⁶¹	Yes ⁶²	Yes
Montana	Depends	No Response	No Response ⁶³	Yes	Depends	Yes ⁶⁴	No Response
Nebraska	Not Applicable	No Response	No Response	No	Yes	No	Yes

⁴² IL: The starting point in the computation of Illinois base income of a corporation is federal taxable income. Therefore, in general, items of income and deduction that are included in the computation of federal taxable income are included in the computation of Illinois base income, while items of income that are excluded in computing federal taxable income, or deductions that are denied in computing federal taxable income, are likewise excluded or denied in the computation of Illinois base income.

⁴³ IL: *Id.*

⁴⁴ IL: *Id.*

⁴⁵ IL: *Id.*

⁴⁶ IL: *Id.*

⁴⁷ IL: Questions regarding franchise tax should be addressed to the Illinois Secretary of State.

⁴⁸ **IL: The starting point in the computation of Illinois base income of a corporation is federal taxable income. Therefore, in general, items of income and deduction that are included in the computation of federal taxable income are included in the computation of Illinois base income, while items of income that are excluded in computing federal taxable income, or deductions that are denied in computing federal taxable income, are likewise excluded or denied in the computation of Illinois base income.**

⁴⁹ KY: Federal taxable income is the starting point for computing Kentucky taxable income.

⁵⁰ LA: Other than specific modifications to federal income and deduction items (none specifically related to non-U.S. entities), Louisiana (LA) requires that the same items that are required/allowed in computing federal taxable income be used in determining net income. LA net income is then determined by applying LA's allocation and apportionment provisions.

⁵¹ MD: Maryland does not tax nonbusiness income of a non-U.S. entity.

⁵² MD: Maryland follows the federal rules. If deductions are not allowed at the federal level, that will be reflected in the federal taxable income, which is the starting point for Maryland taxable income.

⁵³ MA: See TIR 10-16, 08-11; DD 01-8, LRs 00-5, 00-11 and Schedule U-M and Instructions.

⁵⁴ **MA: See TIR 98-6 & Working Draft.**

⁵⁵ MI: The CIT does not define nonbusiness income.

⁵⁶ MI: Federal taxable income is the starting point for determination of CIT liability.

⁵⁷ **MI: *Id.***

⁵⁸ MN: Nonbusiness income is attributed as provided in Minn. Stat. Section 290.17, subd. 2.

⁵⁹ MN: Minn. Stat. Section 290.01, subd. 19 defines Minnesota net income as federal taxable income as defined in IRC Section 63. Any federal deductions that are denied are reflected in federal taxable income and Minnesota net income. The denied federal deductions are not intended as a equivalent to a state penalty.

⁶⁰ MS: The State does not follow the federal rule in computing penalty. The penalty is calculated based on the state's net taxable income.

⁶¹ MO: We would use the higher federal taxable income.

⁶² **MO: The franchise tax rate for tax periods beginning on or after 1/1/16 is zero percent.**

⁶³ MT: Tax would be imposed on entity with Montana activity - unitary group would include U.S. and non-U.S. entities.

⁶⁴ **VT: Yes, depending on activity in the state.**

State ¹	Federal source rules for nonbusiness income ²	Federal source rules for non-U.S. income of 80-20 corporation ³	U.S. branch of non-U.S. entity ⁴	Non-U.S. entity not subject to federal tax ⁵	Federal deductions denied ⁶	Franchise tax or other nonincome-based tax ⁷	Conforms to federal treatment of effectively connected income ⁸
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	No Response
New Jersey	Not Applicable	No	No	Yes	No	Yes ⁶⁵	Yes
New Mexico	Yes	No	No	No	Yes	No	No
New York City	No Response	No Response	No Response	No Response	No	No Response	No Response⁶⁶
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes ⁶⁷	Yes
North Dakota	No ⁶⁸	No	No	Yes	No	No	Yes ⁶⁹
Oklahoma	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Oregon	Yes	No	Yes	Yes	No ⁷⁰	No	Yes
Pennsylvania	No	No	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes ⁷¹	Yes	Yes
Tennessee	No ⁷²	No ⁷³	Yes ⁷⁴	Yes ⁷⁵	No ⁷⁶	Yes ⁷⁷	Yes
Texas	No Response ⁷⁸	No Response ⁷⁹	No Response ⁸⁰	No	No	No	No

⁶⁵ NJ: A non-U.S. corporation doing business in New Jersey would be subject to the New Jersey Corporation Business Tax, which is a franchise tax based on income.

⁶⁶ **NYC: The NYC Business Corporation Tax uses Effectively Connected Income as the starting point for determining the income of alien corporations.**

⁶⁷ NC: G.S. 105-114(b)(3) defines “Doing business” for franchise tax purposes as: “[E]ach and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.”

⁶⁸ ND: Nonbusiness income is allocated according to the provisions of N.D.C.C. Section 57-38.1.

⁶⁹ **ND: Response is specifically for a foreign corporation which is a North Dakota taxpayer. Response does not pertain to a combined report of a foreign corporation which is not the North Dakota taxpayer.**

⁷⁰ OR: Oregon doesn’t have additional penalties specific to foreign business filing deadlines.

⁷¹ RI: The higher federal income starting point serves as the equivalent of the state’s penalty in addition to a late filing penalty and late payment penalty.

⁷² TN: Tennessee has very few non-U.S. entities with franchise, excise tax nexus. Generally, Tennessee follows the “waters edge” approach when determining income subject to taxation. This usually means that the starting point is federal form 1120F income. Nonbusiness income would be determined by applying Tenn. R. & Regs. 1320-6-1-.23, Tenn. Code Ann. §§67-4-2004(33), and 67-4-2011.

⁷³ TN: *Id.*

⁷⁴ TN: *Id.*

⁷⁵ TN: *Id.*

⁷⁶ TN: *Id.*

⁷⁷ TN: *Id.*

⁷⁸ TX: The franchise tax base is taxable margin, not taxable income. Total revenue, a component of margin, is specifically defined in **Texas Tax Code Section 171.1011** and is tied to the amounts entered on specific lines from the federal return, to the extent the amount entered complies with federal income tax law, minus statutory exclusions.

⁷⁹ TX: *Id.*

⁸⁰ TX: *Id.*

State ¹	Federal source rules for nonbusiness income ²	Federal source rules for non-U.S. income of 80-20 corporation ³	U.S. branch of non-U.S. entity ⁴	Non-U.S. entity not subject to federal tax ⁵	Federal deductions denied ⁶	Franchise tax or other nonincome-based tax ⁷	Conforms to federal treatment of effectively connected income ⁸
Utah	Yes ⁸¹	No	No Response ⁸²	No ⁸³	Yes ⁸⁴	Yes ⁸⁵	Yes ⁸⁶
Vermont	No Response	No Response	No	No	Yes ⁸⁷	No	No Response
Virginia	Yes	Not Applicable	No	No	Yes	No	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	No ⁸⁸	No ⁸⁹	Yes ⁹⁰	Yes ⁹¹	Yes

⁸¹ UT: Utah uses Federal 1120 Line 28 or equivalent as a starting point by statute. If all expense lines are zero pursuant to I.R.C. provisions, then the expenses would not be allowable for Utah purposes either. However, Utah law does not expressly address this issue. Therefore, it is not considered a penalty but merely piggybacking on the equivalent of Federal Taxable Income from Federal 1120, Line 28, without the benefit of expenses incurred but not allowed.

⁸² UT: Same as Federal or, in other words, Utah has a starting point using Federal 1120, Line 28 as a starting point and makes additions and subtractions from there. Since there is no addition or subtraction relating to this area, Utah piggybacks federal laws and amounts with respect to the income of the U.S. Branch of a non-U.S. entity.

⁸³ UT: Unless the taxpayer made a worldwide filing election.

⁸⁴ UT: Utah uses Federal 1120 Line 28 or equivalent as a starting point by statute. If all expense lines are zero pursuant to I.R.C. provisions, then the expenses would not be allowable for Utah purposes either. However, Utah law does not expressly address this issue. Therefore, it is not considered a penalty but merely piggybacking on the equivalent of Federal Taxable Income from Federal 1120, Line 28, without the benefit of expenses incurred but not allowed.

⁸⁵ UT: This would be applicable where a worldwide combined election is made and the income and apportionment factors of foreign corporations are therefore included in the combination.

⁸⁶ **UT: Yes, so long as there is no worldwide combined election.**

⁸⁷ VT: Higher federal income starting point serves as the equivalent of Vermont's penalty.

⁸⁸ WI: If the non-U.S. entity has U.S. source income taxable to Wisconsin, we will tax that income regardless if the income is from a U.S. branch of the entity or not.

⁸⁹ WI: If the non-U.S. entity is not subject to federal tax, they would not be subject to Wisconsin income or franchise tax because federal taxable income is the starting point for computing Wisconsin taxable income. However, they may be subject to the Wisconsin economic development surcharge even though they are not subject to Wisconsin income or franchise tax.

⁹⁰ WI: Yes, the higher federal income is the starting point; there is no separate penalty.

⁹¹ WI: The entity may be subject to the Wisconsin economic development surcharge unless it is not organized under Wisconsin law and does not have any business activities in Wisconsin and it has gross receipts of less than \$4 million.

Federal Changes

Amendments to Federal Income Tax Returns Create Administrative Burdens for State Taxpayers

Internal Revenue Service adjustments or taxpayer amendments to federal income tax returns can trigger a myriad of state administrative burdens for multistate taxpayers. In many states, it is unclear what types of actions constitute a federal adjustment that must be reported to the state's tax agency. This is especially so when the triggering event occurs after the state's normal statute of limitations has expired. Another gray area in many states is what the jurisdiction deems to be adequate notice for a reportable adjustment made at the federal level.

From a state tax compliance standpoint, there are several traps for the unwary. Once a taxpayer determines there has been a "final determination" at the federal level, it must comply with each state's notification requirements. These requirements vary by state and it is often unclear what is deemed to be adequate notice of a reportable adjustment.

IRS Audit Reportable Adjustments After State's Normal SOL Expires

It is also important for taxpayers to understand that a Revenue Agent Report (RAR) may extend an otherwise closed statute of limitations for state tax purposes. Some states extend their statute of limitations for amended returns as a result of federal adjustments. As a result, taxpayers should be aware that, in certain states, opportunities and/or compliance issues could arise on returns that would otherwise be closed.

Twenty-six states said signing IRS Form 870 for one audit, when other issues are still under review, constitutes a reportable adjustment after the state's normal statute of limitations has expired. More states—29—said they would deem a partial settlement of federal tax issues reported and paid to the IRS to be a reportable adjustment under this scenario. Similarly, IRS Form 4549-A would be deemed a reportable adjustment in 29 states and IRS Form 886-A would be considered a reportable adjustment in 22 states.

Nearly every jurisdiction agreed that final federal tax changes would constitute a reportable adjustment under these circumstances. Only three jurisdictions—the District of Columbia, Kentucky and Maryland—said their answers to the questions on this issue would change if the case involves a refund of federal taxable income.

Other Reportable Adjustments After State's Normal SOL Expires

Another question for state tax compliance purposes involves other types of adjustments such as those made by other states, local jurisdictions or foreign governments.

Most states agreed that changes by other types of tax agencies, such as other states, municipalities or foreign governments, do not constitute a reportable adjustment after the state's normal statute of limitations has expired.

Providing Notice of Reportable Adjustments

Twenty-four states indicated that for purposes of starting their jurisdiction's statute of limitations for issuing an assessment, adequate notice of a reportable adjustment is only made when the taxpayer actually files an amended return. Fewer jurisdictions—15—said a taxpayer's written notice would satisfy this requirement. Only 11 states said that adequate notice of a reportable adjustment is imputed to them from the date the IRS, or another jurisdiction, provides information to their tax agency. Among these states was Alabama, which noted that receiving such notice "does not relieve the taxpayer's responsibility to file an amended return."

The states were asked additional questions regarding reportable adjustments, and their responses are detailed in charts on the following pages.

For more information, see:
Corporate Income Tax Navigator at 14.1.4.

Reporting Federal Changes: IRS Audit Reportable Adjustments After Your State's Normal Statute of Limitations Expires

State ¹	Signing IRS Form 870 for one audit when other issues still under review ²	Partial settlement of federal tax issues reported/paid to IRS ³	Form 4549-A ⁴	Form 886-A ⁵	Final federal tax changes ⁶	Answer changes if refund of federal taxable income ⁷	Written guidance re: final federal tax change ⁸
Alabama	Yes	Yes	No	No	Yes	No	No
Alaska	Yes	Yes	Yes	No	Yes	No	Yes ⁹
Arizona	No	No	No	No	Yes	No	Yes ¹⁰
Arkansas	Yes	No	Yes	Yes	Yes	No	No
California	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴	Yes ¹⁵	Depends ¹⁶	Yes ¹⁷
Colorado	Yes	Yes	Yes	Yes	Yes	No	Yes
Connecticut	No Response ¹⁸	No Response ¹⁹	No Response ²⁰	No Response ²¹	No Response ²²	No	No
Delaware	No	Yes	Yes	Yes	Yes	No	No
District of Columbia ²³	Yes	Yes	Yes	Yes	Yes	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Please indicate whether or not signing IRS Form 870 (Waiver of Restrictions on Assessment & Collection of Deficiency in Tax and Acceptance of Over Assessment) for only one audit when other audit issues are still under review by the IRS constitutes a reportable adjustment after your state's normal statute of limitations has expired.

³ Please indicate whether or not any partial settlement of federal tax issues as they are reported/paid to the IRS constitutes a reportable adjustment after your state's normal statute of limitations has expired.

⁴ Please indicate whether or not Form 4549-A, Income Tax Discrepancy Report, constitutes a reportable adjustment after your state's normal statute of limitations has expired.

⁵ Please indicate whether or not Form 886-A, Explanation of Adjustments, constitutes a reportable adjustment after your state's normal statute of limitations has expired.

⁶ Please indicate whether or not final federal tax changes (i.e., all appeals exhausted) constitute a reportable adjustment after your state's normal statute of limitations has expired.

⁷ Would your answer to any of the questions above change in cases involving a refund of federal taxable income?

⁸ Does your state have written guidance on what constitutes a final federal tax changes?

⁹ AK: See AS 43.20.030(d).

¹⁰ AZ: A.R.S. 43-327 requires an amended return to be filed upon final determination. Final determination means all appeals exhausted.

¹¹ CA: If it pertains to and concludes a tax year.

¹² CA: Individual taxpayers are required to report all federal adjustments that increase the tax for any year. Corporate taxpayers are required to report all federal changes whether or not they result in increased California tax.

¹³ CA: *Id.*

¹⁴ CA: *Id.*

¹⁵ CA: *Id.*

¹⁶ CA: Individual taxpayers are not required to report federal adjustments that result in refunds; Corporate taxpayers must report all changes. However, a claim for refund resulting from the federal changes must be filed within the normal statute of limitations period OR within 2 years of the final federal determination.

¹⁷ CA: See Publication 1008.

¹⁸ CT: See Conn. Gen. Stat. § 12-226(a)(1). Amended return reporting the federal change must be filed within "ninety days after the final determination of such change."

¹⁹ CT: *Id.*

²⁰ CT: *Id.*

²¹ CT: *Id.*

²² CT: *Id.*

²³ DC: See District official code sections 47-4301 and 47-4304.

State ¹	Signing IRS Form 870 for one audit when other issues still under review ²	Partial settlement of federal tax issues reported/paid to IRS ³	Form 4549-A ⁴	Form 886-A ⁵	Final federal tax changes ⁶	Answer changes if refund of federal taxable income ⁷	Written guidance re: final federal tax change ⁸
Florida ²⁴	Yes	Yes	Yes	Yes	Yes	No	Yes
Georgia ²⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Hawaii	No	Yes	Yes	Yes	Yes	No	No
Idaho	No Response ²⁶	No Response ²⁷	No Response ²⁸	No Response ²⁹	Yes ³⁰	No Response ³¹	No
Illinois	Yes	Yes	Yes	Yes	Yes	No	No
Indiana ³²	No	No	No	No	Yes	No	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	No	Yes ³³
Kansas	Yes	Yes	No	No	Yes	No	No
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes ³⁴	Yes ³⁵
Louisiana	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Yes	Yes	Yes	No Response ³⁶	Yes	No	Yes ³⁷
Maryland ³⁸	No	Yes	Yes	No	Yes	Yes	No
Massachusetts	Depends	Depends	Depends	Depends	Depends	No	Yes ³⁹
Michigan	No Response ⁴⁰	No Response ⁴¹	No Response ⁴²	No Response ⁴³	No Response ⁴⁴	No	No
Minnesota	Yes	Yes	Yes	Yes	Yes	No	No
Mississippi	No	Yes	Yes	No	Yes	No	No

²⁴ FL: See Sections 220.03(2), (3) and 220.23, Florida Statutes. **See Rule 12C-1.023, F.A.C.**

²⁵ GA: See Georgia Code Section 48-7-82.

²⁶ ID: The Tax Commission has made no ruling on this fact situation.

²⁷ ID: *Id.*

²⁸ ID: *Id.*

²⁹ ID: *Id.*

³⁰ ID: See Idaho Decision 9668. See IDAPA 35.01.01.890 & 35.01.01.891.

³¹ ID: The Tax Commission has made no ruling on this fact situation.

³² IN: See Commissioner's Directive #13 (refunds).

³³ IA: Iowa Code section 422.25(1)(a) extends the time for the Department to make an examination and determination after final disposition with the IRS. Iowa Code section 422.73(1) extends the time for a taxpayer to request a refund after final disposition with the IRS. Rules 38.2(1)“f” and 43.3(8)“b” address examination and refund of individual income tax. Rules 51.2(1)“f” and 55.3(5)“b” address examination and refund of corporation income tax.

³⁴ KY: The response would change if it were a refund and out of statute. See KRS 134.580 and KRS 141.235.

³⁵ KY: See KRS 141.210(1).

³⁶ ME: Not until finalized.

³⁷ ME: See 36 M.R.S. §5227-A.

³⁸ MD: Per MD TG section 13-409(b) - Report required within 90 days after the Internal Revenue Service issues to a person the final determination that increases federal taxable income. A claim for refund may not be filed later than 1 year from the date of a final adjustment report of the IRS; or a final decision of the highest court of the US to which an appeal of a final decision of the IRS is taken.

³⁹ MA: Final Determination, a federal determination when there is no right of administrative or judicial appeal. A federal determination is deemed final, for a taxpayer with a right of appeal, if no appeal is taken. A federal determination is final on the date of decision in the court of last resort. A judicial determination is deemed final on the date the right to any further appeal expires if the appeal is not carried to the court of last resort. For purposes of 830 CMR 62C.30.1, the definition of “final determination” is not limited to the meaning of the term when used by the Internal Revenue Service in connection with a closing agreement. See 830 CMR 62.30.1(2).

⁴⁰ MI: “A taxpayer shall file an amended return with the department showing any alteration in or modification of a federal income tax return that affects its tax base under this part. The amended return shall be filed within 120 days after the final determination by the internal revenue service.” See MCL 206.687.

⁴¹ MI: *Id.*

⁴² MI: *Id.*

⁴³ MI: *Id.*

⁴⁴ MI: *Id.*

State ¹	Signing IRS Form 870 for one audit when other issues still under review ²	Partial settlement of federal tax issues reported/paid to IRS ³	Form 4549-A ⁴	Form 886-A ⁵	Final federal tax changes ⁶	Answer changes if refund of federal taxable income ⁷	Written guidance re: final federal tax change ⁸
Missouri	Yes	Yes	Yes	Yes	Yes	No	Yes ⁴⁵
Montana	Yes	Yes	Yes	Yes	Yes	No	No
Nebraska	Yes	Yes	Yes ⁴⁶	No	Yes	No	Yes ⁴⁷
New Hampshire	No Response	No Response	No Response	No Response	No Response	No Response	Yes ⁴⁸
New Jersey ⁴⁹	Yes	Yes	No	No	Yes	No	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	No	No
New York City	Yes	Yes	No Response	No Response	Yes	No Response	No
North Carolina	Yes	No	Yes	Yes	Yes	No	No
North Dakota ⁵⁰	No	No	No	No	Yes	No	Yes
Oklahoma ⁵¹	Yes	Yes	Yes	Yes	Yes	No	No
Oregon	Yes	Yes	Yes	Yes	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	No	No
Rhode Island	No	No	Yes	Yes	Yes	No	Yes ⁵²
Tennessee ⁵³	Yes	Yes	Yes	Yes	Yes	No	Yes
Texas ⁵⁴	No	No	No	No	No	No	No
Utah	No	Yes	Yes	No	Yes	No	No
Vermont	No	Yes	Yes	Yes	Yes	No	No
Virginia	Yes ⁵⁵	Not Applicable ⁵⁶	Yes ⁵⁷	Not Applicable ⁵⁸	Yes	No ⁵⁹	Yes ⁶⁰
West Virginia	No	No	No	No	No	No	No
Wisconsin	Yes	Yes	Yes	Yes	Yes	No	Yes ⁶¹

⁴⁵ MO: See 12 CSR 10-2.105(3).

⁴⁶ NE: Assuming this constitutes a final determination by the IRS.

⁴⁷ NE: See Regulation 24-046.

⁴⁸ NH: See RSA 77-A:10 and N.H. Admin. Rules, Rev 307.10.

⁴⁹ NJ: See N.J.A.C. 18:7-11.8 and 13.8.

⁵⁰ ND: See North Dakota Century Code Section 57-38-34.4 and North Dakota Administrative Code Section 81-03-01.1-09.

⁵¹ OK: See 68 O.S. §2375(H) relating to required reporting for IRS Adjustments.

⁵² RI: Refer to RI Regulation CT 00-05.

⁵³ TN: See Franchise and Excise Tax Notice, Federal Income Revisions (Jan. 2002).

⁵⁴ TX: A final determination resulting from an administrative proceeding of a local, state, or federal regulatory agency; or a judicial proceeding arising from an administrative proceeding of a local, state, or federal regulatory agency, that affects the tax liability must be reported not later than the 120th day after the determination becomes final. The statute of limitations expires one year from the later of the day the report is required to be filed or the day the report is received; or the day the final determination is discovered, if a report is not filed. See Tax Code Section 111.206.

⁵⁵ VA: See P.D. 15-228.

⁵⁶ VA: It would depend upon whether such partial settlement and payment meets the definition of “final determination” as used in Va. Code §58.1-311 and 23 VAC 10-110-70 and as defined in 23 VAC 10-20-180(B).

⁵⁷ VA: See P.D. 15-228.

⁵⁸ VA: The Department of Taxation has not ruled as to whether this constitutes a “final determination” under Va. Code §58.1-311; 23 VAC 10-110-70; and 23 VAC 10-20-180(B).

⁵⁹ VA: However, note that the payment or refund of any federal income or estate tax may constitute a “final determination” for Virginia purposes even though a refund suit may be pending or contemplated which could result in another “final determination.” See 23 VAC 10-20-180(B)(1).

⁶⁰ VA: See 23 VAC 10-110-70(C) and 23 VAC 10-20-180(B).

⁶¹ WI: S. Tax 2.105, Wis. Adm. Code, provides guidance on the required notice for federal adjustments and what constitutes a final federal determination.

Reporting Federal Changes: Other Reportable Adjustments After Your State's Normal Statute of Limitations Expires

State ¹	Other state tax changes ²	Other local tax changes ³	Changes to financial statements ⁴	Changes by foreign governments ⁵	Federal change with no impact on tax liability in state ⁶
Alabama	No	No	No	No	Yes ⁷
Alaska	No	No	No	No	Yes ⁸
Arizona	Yes ⁹	No	No	Yes ¹⁰	No
Arkansas	No	No	No	No	No
California	Yes	Yes	No	Yes	Depends ¹¹
Colorado	No Response	No Response	No Response	No Response	No Response
Connecticut	No	No	No	No	No
Delaware¹²	No Response	No Response	No Response	No Response	Yes
District of Columbia	No	No	No	No	No
Florida	No	No	No	No	Yes
Georgia	No Response	No Response	No Response	No Response	No Response
Hawaii	No	No	No	No	No
Idaho	Yes ¹³	No	No	No	Yes
Illinois	No	No	No	No	No
Indiana	No	No	No	No	Yes
Iowa ¹⁴	No	No	No	No	No
Kansas	Yes	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² Please indicate whether or not other state changes constitute a reportable adjustment after your state's normal statute of limitations has expired.

³ Please indicate whether or not other local tax changes constitute a reportable adjustment after your state's normal statute of limitations has expired.

⁴ Please indicate whether or not changes to financial statements (e.g., net worth), constitute a reportable adjustment after your state's normal statute of limitations has expired.

⁵ Please indicate whether or not changes by foreign governments constitute a reportable adjustment after your state's normal statute of limitations has expired.

⁶ Please indicate whether or not a federal change (e.g., certain federal tax credits) that has no impact on an entity's tax liability in your state constitutes a reportable adjustment after your state's normal statute of limitations has expired.

⁷ AL: Only to the extent Federal income tax deduction is affected.

⁸ AK: See AS 43.20.030(d).

⁹ AZ: Yes, if it changes the credit for taxes paid to another state or country.

¹⁰ AZ: *Id.*

¹¹ CA: Corporate Taxpayers must report all changes; Individual taxpayers need only report changes that result in an increase in state tax for any year.

¹² **DE: Many of Delaware's credits depend on the Federal Filing. Taxpayers should consult Delaware Title 30 for tax credit reference.**

¹³ ID: See IDAPA 35.01.01.891 & Idaho Code section 63-3069.

¹⁴ IA: If the above changes result from a false or fraudulent return filed with the intent to evade tax, the statute of limitations is unlimited. Certain state tax credit programs may impose additional reporting requirements.

State ¹	Other state tax changes ²	Other local tax changes ³	Changes to financial statements ⁴	Changes by foreign governments ⁵	Federal change with no impact on tax liability in state ⁶
Kentucky	No	No	No	No	Yes ¹⁵
Louisiana	No Response	No Response	No Response	No Response	No Response
Maine	Yes	Yes	No	No	No
Maryland	No	No	No	No	No
Massachusetts	Yes ¹⁶	Depends	Depends	Depends ¹⁷	No ¹⁸
Michigan ¹⁹	No Response	No Response	No Response	No Response	No Response
Minnesota	No	No	No	No	Yes
Mississippi	No	No	No	No	No
Missouri	No	No	No	No	No
Montana	No	No	No	No	Yes
Nebraska	Yes	Yes	No	No ²⁰	Yes
New Hampshire	No Response	No Response	No Response	No Response	No Response
New Jersey	No	No	No	No	Yes
New Mexico	No	No	No	No	No
New York City	Yes²¹	No	No	No	Yes
North Carolina	No	No	No	No	No
North Dakota	No Response ²²	No Response ²³	No	Yes	No
Oklahoma ²⁴	No ²⁵	No ²⁶	No ²⁷	No ²⁸	Yes
Oregon	Yes	Yes	No	Yes	No
Pennsylvania	No	No	No	No	Yes
Rhode Island ²⁹	Yes	Yes	Yes	Yes	No
Tennessee	No	No	No	No	No
Texas	No	No	No	No	No

¹⁵ KY: Could affect the Kentucky NOL.

¹⁶ MA: See 830 CMR 62C.30A.1, Changes in Tax Due to Any Other United States or Canadian Jurisdiction.

¹⁷ MA: *Id.*

¹⁸ MA: The change must result in increased Massachusetts tax liability. See 830 CMR 62C.30.1(3)(a).

¹⁹ MI: "A taxpayer shall file an amended return with the department showing any alteration in or modification of a federal income tax return that affects its tax base under this part. The amended return shall be filed within 120 days after the final determination by the internal revenue service." See MCL 206.687.

²⁰ NE: Unless this results in a change to the taxpayer's FTI necessitating the filing of an amended federal return.

²¹ NYC: **New York State tax changes.**

²² ND: To the extent they affect the credit for taxes paid to another state for individual income tax. No impact for corporate income tax.

²³ ND: *Id.*

²⁴ OK: See 68 O.S. §2375(H) relating to required reporting for IRS Adjustments.

²⁵ OK: Generally.

²⁶ OK: *Id.*

²⁷ OK: *Id.*

²⁸ OK: *Id.*

²⁹ RI: Only if it impacts the RI state tax liability.

State ¹	Other state tax changes ²	Other local tax changes ³	Changes to financial statements ⁴	Changes by foreign governments ⁵	Federal change with no impact on tax liability in state ⁶
Utah	No	No	No	Depends ³⁰	No ³¹
Vermont	No	No	No	No	No
Virginia	Yes ³²	No	No	No	No ³³
West Virginia	No	No	No	No	No
Wisconsin ³⁴	Yes	No	No	No	No

³⁰ UT: Reporting is required if there is a change to taxable income by a foreign government that is a competent authority.

³¹ UT: Reporting is required if there is a change to federal taxable income.

³² VA: This is only required if the amount of any individual taxpayer's income tax reported on a return filed with any other state for any taxable year is changed or corrected by such state as a result of an examination conducted by a competent authority of such state, and the taxpayer previously claimed a credit for such tax pursuant to Va. Code §58.1-332. See Va. Code §58.1-311.1.

³³ VA: Va. Code §58.1-311 only applies if the amount of any individual, estate, trust or corporate taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority.

³⁴ WI: S. Tax 2.105, Wis. Adm. Code, provides guidance on the required notice for federal adjustments and what constitutes a final federal determination.

Reporting Federal Changes: Adequate Notice of Reportable Adjustment

State ¹	Only when taxpayer actually files amended return ²	Taxpayer files some type of notice in writing ³	Imputed to tax agency when IRS or another jurisdiction provides information to agency ⁴
Alabama	Yes	No	Yes ⁵
Alaska	Yes	No Response ⁶	No Response ⁷
Arizona	Yes	No	No
Arkansas	No	No	Yes
California ⁸	No	Yes	Yes
Colorado	No Response	No Response	No Response
Connecticut	Yes	No	No
Delaware	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes
Florida ⁹	Yes	No	No
Georgia	No Response	No Response	No Response
Hawaii	No ¹⁰	No	No ¹¹
Idaho	Depends ¹²	Depends ¹³	No
Illinois	Yes	No	No
Indiana	Yes	No	No
Iowa ¹⁴	No	Yes	No
Kansas	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

NV, SD, WA and WY do not impose a corporate tax based on income.

NY said that in 2014, it enacted the most comprehensive changes to its corporate tax structure in nearly 75 years. Because the state is in the process of drafting and finalizing regulations relating to these changes, it said it would be premature for it to opine on the income tax portions of the survey at this time.

OH and SC did not participate in this portion of the survey.

² For purposes of starting the state's statute of limitations for issuing an assessment, adequate notice of a reportable adjustment is only made when a taxpayer actually files an amended return.

³ For purposes of starting the state's statute of limitations for issuing an assessment, adequate notice of a reportable adjustment may be made when a taxpayer files some type of notice in writing to your agency (e.g., a document submitted to an auditor without filing an amended tax return).

⁴ For purposes of starting the state's statute of limitations for issuing an assessment, adequate notice of a reportable adjustment is imputed to the tax agency from the date the IRS or another jurisdiction provides information to the agency.

⁵ AL: This does not relieve the taxpayer's responsibility to file an amended return.

⁶ AK: Alaska has no position at this time.

⁷ AK: *Id.*

⁸ CA: While an amended return may be filed reporting the federal changes, it is not required. What is critical is that the taxpayer or the IRS provide sufficiently detailed information for computation of the resulting California tax change.

⁹ FL: It's the taxpayer's burden to keep the Department apprised of changes the IRS makes to its federal income from which the taxpayer then acts vis-a-vis the FL Dept. Revenue.

¹⁰ HI: Notice for extending the statute of limitations is dated at the earlier of the notice from the taxpayer or the notice from the IRS.

¹¹ HI: *Id.*

¹² ID: *See* IDAPA 35.01.01.891.

¹³ ID: *Id.*

¹⁴ IA: Under Iowa Code section 422.25(1)(a), the notice that begins running the extended assessment period must be in writing in any form sufficient to inform the Department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments must be attached to the notice.

State ¹	Only when taxpayer actually files amended return ²	Taxpayer files some type of notice in writing ³	Imputed to tax agency when IRS or another jurisdiction provides information to agency ⁴
Kentucky ¹⁵	No	Yes	No
Louisiana	No Response	No Response	No Response
Maine	Yes	Yes	Yes
Maryland	Yes	No	No
Massachusetts	Depends	Depends	Depends
Michigan ¹⁶	No	No	No
Minnesota	No	Yes	No
Mississippi	Yes	No	No
Missouri	No	Yes	Yes
Montana	Yes	No	No
Nebraska	Yes	No	No
New Hampshire ¹⁷	No	Yes	No
New Jersey	Yes	No	No
New Mexico	Yes	No	No
New York City	Yes¹⁸	No Response	No Response
North Carolina ¹⁹	Yes	No	Yes
North Dakota	No	Yes	No
Oklahoma ²⁰	No Response	No Response	No Response
Oregon	Yes ²¹	Yes	Yes
Pennsylvania	Yes	No	No
Rhode Island	Yes	Yes	Yes
Tennessee	No	Yes	No
Texas	Yes	Yes	No
Utah	No	Yes	No
Vermont	Yes	No	Yes

¹⁵ KY: See KRS 141.210(1)(b).

¹⁶ MI: The statute of limitations for issuing an assessment shall be extended - if the period exceeds the standard four years - for the period pending final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for one year. See MCL 205.27a(2)-(4) and RAB 2015-26.

¹⁷ NH: The taxpayer must file a report of change form.

¹⁸ NYC: New York City has eliminated Forms NYC-3360, NYC-3360B, and NYC-115, and taxpayers must now file amended returns to report state or federal changes.

¹⁹ NC: If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of Chapter 105. (See N.C. Gen. Stat. 105-130.20.)

²⁰ OK: See 68 O.S. §2375(H) relating to required reporting for IRS Adjustments.

²¹ OR: If a taxpayer filed a federal or other state's amended return they must file an Oregon amended return within 90 days.

State¹	Only when taxpayer actually files amended return²	Taxpayer files some type of notice in writing³	Imputed to tax agency when IRS or another jurisdiction provides information to agency⁴
Virginia	Yes ²²	No	No ²³
West Virginia	No	No	No
Wisconsin ²⁴	No	Yes	Yes

²² VA: Under Va. Code §58.1-311, a taxpayer audited by the IRS is required to file an amended return and report the changes to the Department within one year of the final determination of the change. Further, under Va. Code §58.1-1823, a taxpayer has three years from the last day prescribed by law for the timely filing of the return, or one year from the final determination of a federal change or correction to file an amended return to request a refund. If such amended returns are not filed, the Department may make an assessment of additional tax based on the federal adjustments at any time pursuant to Va. Code §58.1-312. See P.D. 11-105.

²³ VA: While notice is never imputed to the Department, the taxpayer is not required to file an amended individual income tax return if the Department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax.

²⁴ WI: S. Tax 2.105, Wis. Adm. Code, provides guidance on the required notice for federal adjustments and what constitutes a final federal determination.

Sales Tax Policies

States Identify Sourcing Rules, Clarify Application To Various Interstate and Intrastate Transactions

When the majority of state sales tax systems were established in the early- to mid-20th century, policymakers crafted their laws and rules to address relatively simple transactions typically involving a seller furnishing tangible personal property or services directly to a buyer for consideration. Sales or use tax was generally collected at the point of sale.

Over time, however, the manner in which products and services are bought and sold has changed drastically due to advances in computer technology that have aided in the explosion of electronic commerce and the internet. These technological advances have posed new challenges affecting sales and use tax policy and procedure in a wide range of issues, including sourcing and tax collection.

Destination-Based Sourcing, Origin-Based Sourcing

Every state imposing sales and use taxes provides sourcing rules to identify the location of a sale and to determine which jurisdiction is entitled to the revenue generated from the transaction. Yet sourcing has become a complicated endeavor for taxpayers. Sourcing rules vary from state to state and may depend upon the object of the transaction; they may be further complicated by the type of transaction and mode of delivery.

As a practical matter, sourcing rules generally attempt to incorporate the destination concept in order to impose the tax where the good or service is consumed. However, a state may choose to source sales on either a destination basis or on an origin basis, or even vary rules for interstate and intrastate transactions.

Destination-based sourcing is often used for sales of tangible personal property as the final destination of a transferred good can usually be determined. Because the destination of a sale of services can be difficult to determine, some states use origin-based sourcing rules for those transactions.

Origin-based sourcing rules, on the other hand, are easily enforced but can lead to economic distortion as they often result in a destination state collecting little or no tax.

Different Approaches to Sourcing Software

Rapid technological advancement has left taxpayers scrambling to determine the application of sourcing rules to sales of software delivered via tangible media versus electronic download, and for amounts paid by customers to access software that is not actually delivered to the customer.

Software has been treated as tangible personal property based on its ability to be physically perceived when transferred in a tangible medium. However, electronically delivered software does not share the same physical characteristics, regardless of the fact that its content and function may be identical. Despite this, many states classify software as tangible personal property, regardless of the method of delivery. Alternatively, a number of states have focused on the delivery method to determine whether software is taxed as tangible personal property.

The different approaches states take to classifying software transactions further compounds the complexity and lack of uniformity for sourcing rules, which often depend upon an item's status as taxable tangible personal property or the transaction itself as taxable.

Varying state sourcing rules frequently provide that amounts paid by out-of-state customers to access software that is not physically delivered to the customer are sourced to: the location where the software is used; the location of the customer's billing address; the location of the server; or to another location such as the retailer's place of business.

Sourcing to the location of the seller is easier to determine and enforce for both the sales of software and the service of providing access to software without delivery. However, some taxpayers argue that the transactions should be

For more information, see:

Sales and Use Tax Navigator at 3 and 4.1.

Portfolio 1420-2nd: Limitations on States' Jurisdiction to Impose Sales and Use Taxes

Portfolio 1380-1st: Sales and Use Taxes: Cloud Computing

sourced to the location where the customer uses, consumes or takes possession of the software. This approach, they say, is consistent with the consumption nature of the sales tax.

Trailing Nexus Policies

Another gray area in the sales tax realm is trailing nexus—where states find that an out-of-state corporation has nexus with the state for a certain period of time, sometimes even more than a year, after the corporation has ceased to have a physical presence in the state.

According to some practitioners, including Fred Nicely, senior tax counsel for COST, trailing nexus is unconstitutional. However, Nicely recognizes that it may prove useful when determining whether a business has left the state. “The only way you can use this *Quill* trailing nexus is [when] looking at whether a business has truly gone out of business in the state. And a business declaring it’s no longer doing business in the state one month and then coming back two or three months later [after] never really ceasing operations, I can see a state looking at that [situation] differently. But, [for] a business that has truly ended their business in the state, has moved their operations completely out and has no physical presence, I don’t think the trailing nexus standard is constitutional,” he told Bloomberg BNA on April 11.

Providing a slightly different perspective, Richard Cram, director of the Multistate Tax Commission’s National Nexus Program, told Bloomberg BNA on April 10 that, “from the states’ perspective, trailing nexus is constitutional.” He then added that “it cannot go on indefinitely, but the benefits the taxpayer has derived from the services provided by the state do not expire immediately once the taxpayer’s physical presence ends in the state.”

Sharing Economy

The “sharing economy,” also sometimes called the “on-demand economy,” has introduced a marketplace in which individuals, who are not ordinarily in the business of selling, can offer their homes, cars, transportation services and other items for sale, use, lease or rent to a global customer base through online platforms.

These third-party platforms, or “facilitators,” handle the details, usually for a fee, of arranging the transactions between the buyer and the owner-seller or service provider. Many facilitators have no ownership interest in the goods and do not directly provide the service offered for sale. Some facilitators, like online travel companies, acquire hotel rooms or airline seats and then resell them to customers.

For goods and services flowing through the sharing economy that are subject to state and local sales and use tax, one of the major questions is: Who is responsible for collecting and remitting the tax due—the owner of the property, provider of the services or the third-party facilitator? Existing state tax laws and rules, drafted for a different era, often provide no clear answer for sales made as part of the sharing economy.

Many experts agree that placing the collection obligation on the third party facilitator would make more sense for the states. “Placing the responsibility of collecting the sales tax on a third party facilitator would be less burdensome administratively for the state than placing the collection responsibility on each separate owner,” Priya D. Nair, a state and local tax manager at Grant Thornton’s National Tax Office in Washington, D.C. told Bloomberg BNA in an April 13 e-mail.

“[The states] want the tax collection and remittance agent to be the one with the deepest pockets and the one that’s easiest to find,” Brian Kirkell, a principal at RSM US LLP’s Washington National Tax Office, said.

Cram echoed Nair’s and Kirkell’s sentiments, but added that “states may in some situations need to amend their tax imposition statutes in order to impose sales and use tax liability on the platform or marketplace.”

Bloomberg BNA Survey Clarifies States’ Positions on Sales Tax Policy

Sourcing Tangible Personal Property and Software

In light of the varying rules for sourcing currently in effect throughout the country, Bloomberg BNA asked the states to clarify their position with respect to specific types of transactions. State tax department personnel identified the sourcing rules in place for each state relating to interstate and intrastate sales of tangible personal property and services. The vast majority of states indicated they use destination-based sourcing for interstate sales of tangible personal property, with only 4 states indicating they use origin-based sourcing.

With respect to the sourcing of intrastate sales of tangible personal property, 22 states said they use a destination-based sourcing method and eight states said they use an origin-based sourcing method, both down one from last year.

We also asked the states to indicate the method used to source amounts paid for software that is accessed by, but not physically delivered to, an in-state customer. Thirteen states said their sourcing method is based on where the software is used. Four jurisdictions—the District of Columbia, Nebraska, North Dakota and Rhode Island—indicated that they source based on the location of the server, and only Utah indicated it sources based on the billing address of the customer. Ten states indicated that they use a method other than the location of the server, customer’s billing address or location where the software is used, thus illustrating the huge variance that exists in this area.

Nexus Enforcement Policies

This year, the states were asked whether they send a nexus questionnaire to retailers the state believes may be doing business within its borders and, if so, to identify the form number for the questionnaire. Thirty-one states in-

icated they send a nexus questionnaire. Only half of these states identified the form number; however, some states, including Arkansas and Maryland, said that their questionnaire does not have a form number.

We also asked states to indicate how long an out-of-state entity would have nexus with the state after the nexus-creating activity ended. Eighteen states said they would find nexus for the entire taxable year for a corporation that stops an activity during the tax year that once created nexus.

Sharing Economy

The 2017 survey also included a new category of questions addressing who bears the burden of sales tax collection in certain sharing-economy transactions. The survey sought to identify whether the owner or the third-party facilitator was required to collect sales tax on transactions for the provision of short-term accommodations or short-term rental of owner's vehicles. We also asked whether the third-party vendor was responsible for collecting the tax on transactions for the provision of transportation services.

Sales Tax Collection Obligations

Transportation Services (i.e., Uber or Lyft)

8

● Owner
● Third Party

Short-term Accommodations (i.e., Airbnb)

25

15

Short-term Rental of Owners' Vehicle (i.e., GetAround, RelayRides)

18

14

Note: Some states provided more than one "yes" response. DC and NYC are treated as states for the purposes of this chart. AK, DE, MT, NH and OR do not impose a sales and use tax. NYC, OH, OK and SC did not participate in this portion of the survey. As a result, these 9 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

The states' responses were most closely aligned when it comes to imposing the tax collection obligation on transactions for the provision of short-term accommodations facilitated by a third party such as Airbnb. Twenty-five states said the collection obligation is imposed on the owner, and only 15 states said they impose this obligation on the third-party facilitator.

States were split, however, on who must collect the tax on transactions for the short-term rental of owner's vehicles facilitated by GetAround or another similar third-party vendor. Fourteen states indicated that collection obligation is imposed on the third party vendor, and 18 states said it was imposed on the owner.

Surprisingly, only eight states responded that they impose the tax collection obligation on third-party vendors, such as Uber or Lyft, who arrange the provision of transportation services for passengers.

"I would have expected, and I expect to see, more states take the approach that the facilitator would be the party responsible for collecting sales tax," Sylvia Dion, founder and managing partner at PrietoDion Consulting Partners LLC in Westford, Massachusetts, told Bloomberg BNA on April 13. "Just as a practical matter—it's the bigger player [and] states are more likely to obtain more revenue if they impose that collection duty on the facilitators themselves," she explained.

The states' responses to these sales tax policy questions are detailed in the charts on the following pages.

Sales Tax Nexus Policies: Nexus Enforcement Policies

State ¹	Sends nexus questionnaire ²	Nexus for entire year for trailing nexus ³	Nexus for entire year plus additional year for trailing nexus ⁴	Nexus for entire year plus more than an additional year for trailing nexus ⁵	Trailing nexus depends on magnitude of activity ⁶
Alabama ⁷	Yes⁸	No ⁹	No ¹⁰	No ¹¹	No ¹²
Arizona	Yes	Yes	No	No	No
Arkansas	Yes¹³	Yes	Not Applicable	Not Applicable	Not Applicable
California	Yes¹⁴	No Response	No	No	No Response ¹⁵
Colorado	Yes	Depends	Depends	Depends	Depends
Connecticut	No	No Response ¹⁶	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹
District of Columbia	Yes	No	No	No	Yes ²⁰
Florida ²¹	No Response	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² **Your state sends a nexus questionnaire to corporations that it believes might be doing business within its borders.**

³ Your state would find taxable nexus for the entire taxable year (but no more), for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁴ Your state would find taxable nexus for the entire taxable year, plus an additional year (but no more), for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁵ Your state would find taxable nexus for the entire taxable year, plus more than an additional year, for a corporation that stops activity during the tax year that once created nexus (*i.e.*, trailing nexus).

⁶ Do "trailing nexus" determinations depend on the magnitude of the nexus-creating activity (e.g., three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum supertanker)?

⁷ AL: If a taxpayer has any property, including rental, inventory, etc., employees that come into AL for any reason or any AL payroll, or has an economic nexus of \$250,000.00 or more in sales in AL, then they have nexus in AL for Sales Tax purposes. Any sales calls by a salesman in AL, installation or construction done by any employee within a company will create nexus in AL.

⁸ **AL: The Alabama Nexus Questionnaire does not have a form number, but may be found at the following link: http://revenue.alabama.gov/documents/forms/Nexus_Questionnaire.pdf.**

⁹ **AL: Trailing nexus is determined on a case by case basis.**

¹⁰ **AL: *Id.***

¹¹ **AL: *Id.***

¹² **AL: *Id.***

¹³ **AR: No Form Number.**

¹⁴ **CA: BOE-790.**

¹⁵ CA: The trailing nexus period generally consists of the quarter in which the retailer ceases the activities that had caused it to be a "retailer engaged in business" in California, as well as the entire quarter that follows. Depending on the facts and circumstances specific to each retailer, the period of trailing nexus may be shorter or longer than the general "quarter-plus-a-quarter" approach.

¹⁶ CT: DRS has no published position.

¹⁷ CT: *Id.*

¹⁸ CT: *Id.*

¹⁹ CT: *Id.*

²⁰ DC: Under the DC Code, §47-2201(h)(2), "Engaging in business in the District includes the selling, delivering, or furnishing in the District, or any activity in connection with those terms ... Additionally, the having of any representative, agent, salesman, canvasser, or solicitor operating in the District for the purpose of making sales at retail. It does not matter what kind of vehicle these agents use in making the sales at retail.

²¹ FL: Generally, nexus ceases at the time in which any connection or activity that created the nexus ceases. Taxpayers registered with the Department must complete final coupon and request cancellation of sales tax number. The extent of the activity creating trailing nexus is determined on a case by case basis.

State ¹	Sends nexus questionnaire ²	Nexus for entire year for trailing nexus ³	Nexus for entire year plus additional year for trailing nexus ⁴	Nexus for entire year plus more than an additional year for trailing nexus ⁵	Trailing nexus depends on magnitude of activity ⁶
Georgia ²²	Yes	Depends	Depends	Depends	Yes ²³
Hawaii	No	Depends ²⁴	Depends ²⁵	Depends ²⁶	Depends ²⁷
Idaho	Yes	No	No	No	No
Illinois ²⁸	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No ²⁹	No ³⁰	No ³¹
Iowa	Yes ³²	Yes	No	No	No
Kansas	No Response	Depends	Depends	Depends	Depends
Kentucky	Yes ³³	Yes	No	No	No
Louisiana	Yes ³⁴	Yes	No	No	No
Maine ³⁵	No	No	No	No	No
Maryland	Yes ³⁶	No Response ³⁷	No Response ³⁸	No Response ³⁹	No Response ⁴⁰
Massachusetts	No	Depends	Depends	Depends	No
Michigan	Yes ⁴¹	Yes ⁴²	No	No	No ⁴³
Minnesota	Yes	Yes ⁴⁴	Yes ⁴⁵	No	No
Mississippi	Yes	No	No	No	No ⁴⁶
Missouri	Yes ⁴⁷	Yes	Yes ⁴⁸	Yes ⁴⁹	No

²² GA: Georgia statutes and regulations do not expressly address trailing nexus. Whether [nexus would be found for the entire year, a year plus an additional year or more than an additional year for a corporation that stops a nexus-creating activity during the tax year] would depend on the specific facts of each case.

²³ GA: Georgia would apply a case-by-case analysis.

²⁴ HI: See section 18-237-13.

²⁵ HI: *Id.*

²⁶ HI: *Id.*

²⁷ HI: *Id.*

²⁸ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

²⁹ IN: Assumes a permanent cessation of activity.

³⁰ IN: *Id.*

³¹ IN: *Id.*

³² IA: The nexus forms are: **21-004 (Activities Within Iowa for a Corporation, Partnership or LLC); 21-006 (Service Activities in Iowa for a Corporation, Partnership or LLC); and 21-007 (Iowa Customer/Dealer)**.

³³ KY: Revenue Form 41A800

³⁴ LA: Form R-4310, the Questionnaire to Assist in Determining Liability for Corporate Income or Franchise Tax.

³⁵ ME: A taxpayer with established nexus who then ceases all nexus-creating activities as of a certain date should inform Maine Revenue Services of this fact in writing and provide all relevant details. The date certain should correspond to the last day of a filing period (monthly, quarterly, etc.), depending on which filing period the taxpayer uses.

³⁶ MD: No form number.

³⁷ MD: Dependent on whether subsequent sales are derived from nexus creating activity - case by case basis.

³⁸ MD: *Id.*

³⁹ MD: *Id.*

⁴⁰ MD: *Id.*

⁴¹ MI: Form 1353.

⁴² MI: Generally, the remainder of month plus an additional 11 calendar months. See RAB 1999-1 and RAB 2015-22.

⁴³ MI: *Id.*

⁴⁴ MN: Once nexus is created the taxpayer has nexus for 11 months.

⁴⁵ MN: *Id.*

⁴⁶ MS: The act of creating nexus would make all sales taxable regardless of magnitude.

⁴⁷ MO: Form 4458 Business Activity Questionnaire.

⁴⁸ MO: Assuming registration not withdrawn with Department of Revenue.

⁴⁹ MO: *Id.*

State ¹	Sends nexus questionnaire ²	Nexus for entire year for trailing nexus ³	Nexus for entire year plus additional year for trailing nexus ⁴	Nexus for entire year plus more than an additional year for trailing nexus ⁵	Trailing nexus depends on magnitude of activity ⁶
Nebraska	Yes ⁵⁰	Yes	No	No	No
Nevada	No	No	No	No	No
New Jersey	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	No	No
New York	Yes	No	No	No	No
North Carolina	Yes ⁵¹	No ⁵²	No ⁵³	No ⁵⁴	No ⁵⁵
North Dakota	Yes ⁵⁶	No	Yes	No	No
Pennsylvania	Yes ⁵⁷	No	No	No	No
Rhode Island ⁵⁸	Yes	Yes	No	No	No
South Dakota	Yes ⁵⁹	Yes	No	No	No
Tennessee	Yes ⁶⁰	Yes ⁶¹	No	No	Not Applicable
Texas	Yes ⁶²	No ⁶³	No ⁶⁴	No ⁶⁵	No
Utah	Yes ⁶⁶	Yes ⁶⁷	No ⁶⁸	No	No
Vermont	No	Yes	No	No	No
Virginia	No	No ⁶⁹	No ⁷⁰	No ⁷¹	No ⁷²
Washington	Yes ⁷³	No	Yes ⁷⁴	No ⁷⁵	No
West Virginia	Yes ⁷⁶	Yes	Yes	No	No

⁵⁰ NE: This is done via letter, not a specific form or form number.

⁵¹ NC: No form number, but form is "Business Questionnaire" and is available on website.

⁵² NC: Based on the corporation's nexus being created by one activity.

⁵³ NC: *Id.*

⁵⁴ NC: *Id.*

⁵⁵ NC: *Id.*

⁵⁶ ND: ND SFN 22003.

⁵⁷ PA: Business Activities Questionnaire - REV-203D.

⁵⁸ RI: Not enough information provided to make a general answer. Each case would be looked at individually based on the type of business that operated in the state and any further activity that business may have in the state. If a business has extended warranties with customers after leaving RI and periodically services these warranties, this would constitute an ongoing nexus.

⁵⁹ SD: No form number. It is an internal document titled "Business Activity Questionnaire."

⁶⁰ TN: RV-F1406801.

⁶¹ TN: The corporation would be required to file returns until it properly terminated.

⁶² TX: Form AP-114, Texas Nexus Questionnaire.

⁶³ TX: An out-of-state seller ceases to have nexus with this state when the seller no longer has nexus with this state and no longer intends to engage in activities that would establish nexus with the state. For example, a seller who enters the state each year to participate in an annual trade show does not cease to have nexus with this state between one trade show and the next. In contrast, a seller who discontinues the product line that it marketed and sold in this state, and who does not anticipate entering the state to solicit new business, has ceased to have nexus with this state.

⁶⁴ TX: *Id.*

⁶⁵ TX: *Id.*

⁶⁶ UT: The form number of the nexus questionnaire is TC-51.

⁶⁷ UT: If the corporation stops activity after the period when nexus was created there would be nothing subject to tax in Utah.

⁶⁸ UT: *Id.*

⁶⁹ VA: See PD 98-67.

⁷⁰ VA: *Id.*

⁷¹ VA: *Id.*

⁷² VA: *Id.*

⁷³ WA: Washington Business Activities Questionnaire - REV 40 0033e.

⁷⁴ WA: Trailing nexus for retail sales tax has changed (as of July 1, 2016); it is now the remainder of the current year plus one year.

⁷⁵ WA: *Id.*

⁷⁶ WV: WV/Nexus Rev. 2014.

State ¹	Sends nexus questionnaire ²	Nexus for entire year for trailing nexus ³	Nexus for entire year plus additional year for trailing nexus ⁴	Nexus for entire year plus more than an additional year for trailing nexus ⁵	Trailing nexus depends on magnitude of activity ⁶
Wisconsin	Yes ⁷⁷	Yes ⁷⁸	No	No	No
Wyoming	No ⁷⁹	No ⁸⁰	No ⁸¹	No ⁸²	No ⁸³

⁷⁷ WI: Form A-816.

⁷⁸ WI: If nexus began partway through the year, nexus would be established from that point through the end of the seller's tax year. For a more detailed explanation please refer to Pub 228, page 4, Sellers at a "One-Time" Event in Wisconsin, <http://www.revenue.wi.gov/pubs/pb228.pdf>.

⁷⁹ WY: Wyoming does not have a specific form/questionnaire that is sent to business we believe are operating within our borders but we do make specific inquiries to the business directly based on the information we have received.

⁸⁰ WY: The Corporation's sales/use tax license can be terminated at any time the corporation ceases to have nexus activities in our state.

⁸¹ WY: *Id.*

⁸² WY: *Id.*

⁸³ WY: *Id.*

Sales Tax Policies: Sourcing and Method of Delivery (Part 1 of 2)

State ¹	Interstate destination-based ²	Intrastate destination-based ³	Interstate origin-based ⁴	Intrastate origin-based ⁵	Interstate sourcing to location of repairs ⁶	Intrastate sourcing to location of repairs ⁷	Interstate sourcing to where repaired item delivered ⁸	Intrastate sourcing to where repaired item delivered ⁹
Alabama	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Arizona ¹⁰	Yes	No	No	Yes ¹¹	Yes ¹²	Yes ¹³	No ¹⁴	No ¹⁵
Arkansas	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
California ¹⁶	No	No	No	No	No	No	No	No
Colorado	Yes	Yes	No	No	No	No	No	No
Connecticut	No Response ¹⁷	Not Applicable	No Response ¹⁸	Not Applicable	No Response ¹⁹	Not Applicable	No Response ²⁰	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² For interstate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?

³ For intrastate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?

⁴ For interstate transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale?

⁵ For intrastate transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale?

⁶ For interstate transactions, does your state source services, such as repairs, to the location where the repairs were made?

⁷ For intrastate transactions, does your state source services, such as repairs, to the location where the repairs were made?

⁸ For interstate transactions, does your state source services, such as repairs, to the location where the buyer regains possession of the repaired item?

⁹ For intrastate transactions, does your state source services, such as repairs, to the location where the buyer regains possession of the repaired item?

¹⁰ AZ: Answers assume "interstate" means an order is received from an out-of-state location and "intrastate" means an order is received from an in-state location. Answers apply to state and county taxes only unless stated otherwise.

¹¹ AZ: Assuming the corporation has an in-state business location, the place of sale is sourced to the in-state business location as it appears on the corporation's TPT license.

¹² AZ: For modifications only. Arizona generally does not tax services, including activities that constitute the maintenance, repair, replacement or alteration of existing property. However, services that constitute modifications are subject to TPT under the prime contracting classification and are sourced to the location of the modification. Any other services, if they become subject to TPT, are sourced either to the customer's location (for interstate transactions, provided the serviced property is delivered to that location and is to be used exclusively out-of-state) or to the corporation's in-state location (for intrastate transactions).

¹³ AZ: *Id.*

¹⁴ AZ: Arizona generally does not tax services, including activities that constitute the maintenance, repair, replacement or alteration of existing property. However, services that constitute modifications are subject to TPT under the prime contracting classification and are sourced to the location of the modification. Any other services, if they become subject to TPT, are sourced either to the customer's location (for interstate transactions, provided the serviced property is delivered to that location and is to be used exclusively out-of-state) or to the corporation's in-state location (for intrastate transactions).

¹⁵ AZ: *Id.*

¹⁶ CA: In all instances, the "source" is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

¹⁷ CT: Sales of tangible personal property take place where transfer of title occurs.

¹⁸ CT: Sales of tangible personal property take place where transfer of title occurs. Sales of services taxable where provided if the services are accepted or received in Connecticut for consumption or use in Connecticut. See Conn. Agencies Regs. §12-407(2)(i)(DD)-1.

¹⁹ CT: Sales of services taxable where provided if the services are accepted or received in Connecticut for consumption or use in Connecticut. See Conn. Agencies Regs. §12-407(2)(i)(DD)-1.

²⁰ CT: *Id.*

State ¹	Interstate destination-based ²	Intrastate destination-based ³	Interstate origin-based ⁴	Intrastate origin-based ⁵	Interstate sourcing to location of repairs ⁶	Intrastate sourcing to location of repairs ⁷	Interstate sourcing to where repaired item delivered ⁸	Intrastate sourcing to where repaired item delivered ⁹
District of Columbia	Yes	Not Applicable	Yes	Not Applicable	Yes ²¹	Not Applicable	Yes	Yes
Florida	Yes ²²	Yes ²³	No ²⁴	No	Yes	Yes	No Response ²⁵	No Response ²⁶
Georgia	Yes	Yes	No	No	Yes	Yes	No	No
Hawaii	Yes ²⁷	Yes	No ²⁸	No	No	No	Yes ²⁹	Yes ³⁰
Idaho	Yes	Not Applicable ³¹	No	Not Applicable ³²	No Response ³³	Not Applicable ³⁴	No Response ³⁵	Not Applicable ³⁶
Illinois ³⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Not Applicable	Yes	Not Applicable	Yes	Not Applicable	No	Not Applicable
Iowa	Yes	Yes	No	No	No	No	Yes	Yes
Kansas	Yes	Yes	No Response	No	No	Yes ³⁸	Yes	Yes
Kentucky	Yes	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana	Yes	Yes	No	No	Yes	Yes ³⁹	No	No
Maine	Yes ⁴⁰	Not Applicable	No	Not Applicable	No	Not Applicable	Yes	Not Applicable
Maryland	Yes ⁴¹	Yes ⁴²	Not Applicable ⁴³	Not Applicable	Yes	Yes	Yes	Yes

²¹ DC: Labor outside the District on repairs made is exempt from the sales tax unless it is incidental to services performed in District.

²² FL: When title passes at the seller's location, then the sale is sourced at the seller's location.

²³ FL: *Id.*

²⁴ FL: Section 212.05(1)(l), F.S., requires Florida florists to source sales based on orders taken in Florida regardless of delivery location.

²⁵ FL: When tangible personal property is shipped into Florida, repaired, and shipped back to the owner in another state by common carrier or mail, the amount charged for the repair is not subject to sales tax. If tangible personal property is sent out of Florida to be repaired in another state and returned, the transaction is subject to sales tax.

²⁶ FL: *Id.*

²⁷ HI: If out-of-state seller has Hawaii nexus, sale is taxed if delivered to a Hawaii customer. If no nexus, customer is subject to Use Tax.

²⁸ HI: *Id.*

²⁹ HI: This assumes that the buyer regains possession of the repaired item in the same place that the item will be used.

³⁰ HI: *Id.*

³¹ ID: The Idaho State Tax Commission does not administer any of the local option sales taxes.

³² ID: *Id.*

³³ ID: Repair labor is not taxable. Idaho would tax the use of the parts in Idaho but gives reciprocity for taxes rightly paid to other states.

³⁴ ID: The Idaho State Tax Commission does not administer any of the local option sales taxes.

³⁵ ID: Repair labor is not taxable. Where the seller or its agent, common carrier, etc. delivers the goods to the buyer is the taxable point of sale.

³⁶ ID: The Idaho State Tax Commission does not administer any of the local option sales taxes.

³⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

³⁸ KS: Yes, for tangible personal property.

³⁹ LA: This answer applies to repairs only, not other services.

⁴⁰ ME: Origin-based sourcing for FTD sales by florists.

⁴¹ MD: Sale is considered to take place in MD if contract is entered into in this State by a non-resident seller who has a place of business from which sales are made AND delivery is made by seller to buyer in this State (see COMAR 03.06.01.25). However, use tax will apply even if sale is not made within this State.

⁴² MD: *Id.*

⁴³ MD: *Id.*

State ¹	Interstate destination-based ²	Intrastate destination-based ³	Interstate origin-based ⁴	Intrastate origin-based ⁵	Interstate sourcing to location of repairs ⁶	Intrastate sourcing to location of repairs ⁷	Interstate sourcing to where repaired item delivered ⁸	Intrastate sourcing to where repaired item delivered ⁹
Massachusetts	Yes ⁴⁴	Not Applicable ⁴⁵	No	Not Applicable ⁴⁶	No ⁴⁷	Not Applicable ⁴⁸	No ⁴⁹	No ⁵⁰
Michigan	Yes	Not Applicable	No	Not Applicable	No Response ⁵¹	Not Applicable	No Response ⁵²	Not Applicable
Minnesota	Yes ⁵³	Yes	No	No	No	No	Yes	Yes
Mississippi	Yes	No	Yes	Yes	Yes	Yes ⁵⁴	No	No
Missouri	Yes	No	No	Yes	Yes ⁵⁵	Yes ⁵⁶	No ⁵⁷	No ⁵⁸
Nebraska	Yes	Yes	No ⁵⁹	No ⁶⁰	No ⁶¹	No ⁶²	Yes	Yes
Nevada	Yes	Yes	No	No	Not Applicable ⁶³	Not Applicable ⁶⁴	Not Applicable ⁶⁵	Not Applicable ⁶⁶
New Jersey	Yes	Not Applicable	No	Not Applicable	No	Not Applicable	Yes	Yes
New Mexico	No	No	No	Yes	No	No	No	No
New York	Yes	Yes	No	No	No Response ⁶⁷	No Response ⁶⁸	Yes ⁶⁹	Yes ⁷⁰
North Carolina	Yes	Yes ⁷¹	No ⁷²	No ⁷³	No	No	Yes	Yes
North Dakota	Yes	Yes	No	No	Depends ⁷⁴	Depends ⁷⁵	Depends ⁷⁶	Depends ⁷⁷
Pennsylvania	Yes	No	No	Yes	No	No	Yes	No

⁴⁴ MA: See 830 CMR 63.38.1.

⁴⁵ MA: *Id.*

⁴⁶ MA: *Id.*

⁴⁷ MA: *Id.*

⁴⁸ MA: *Id.*

⁴⁹ MA: *Id.*

⁵⁰ MA: *Id.*

⁵¹ MI: Services are not subject to Michigan sales tax.

⁵² MI: *Id.*

⁵³ MN: Telefloral uses origin-based sourcing.

⁵⁴ MS: Repairs performed outside the state - any parts included in the repair are subject to use tax to the customer when the customer takes delivery in Mississippi.

⁵⁵ MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.

⁵⁶ MO: Assuming no business location in Missouri that carries out repair services. Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.

⁵⁷ MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.

⁵⁸ MO: *Id.*

⁵⁹ NE: Origin sourcing used only for floral "wire" orders.

⁶⁰ NE: *Id.*

⁶¹ NE: In general the sale is sourced to where the service is first used.

⁶² NE: *Id.*

⁶³ NV: The State of Nevada does not tax services, so there are no statutes dealing with the sourcing of services.

⁶⁴ NV: *Id.*

⁶⁵ NV: *Id.*

⁶⁶ NV: *Id.*

⁶⁷ NY: If repair is made out of state, and repaired property is used in state by resident, use tax is due.

⁶⁸ NY: Generally, services are sourced where repair is made unless vendor delivers repaired property elsewhere.

⁶⁹ NY: Services are sourced to the point of delivery to the customer.

⁷⁰ NY: *Id.*

⁷¹ NC: Possible exceptions in G.S. 105-164.4E(a)(3) for "Advertising and Promotional Direct Mail" and G.S. 105-164.4E(b)(1) for "Other Direct Mail."

⁷² NC: Possible exceptions in G.S. 105-164.4B(d)(3) "Florist Wire Sale"; G.S. 105-164.4G (**Admission charges**) or G.S. 105-164.4I (**Service contract**).

⁷³ NC: *Id.*

⁷⁴ ND: Y/N. It would depend on whether the invoice is lump-sum billed or not. Under lump-sum bills, the tax is due by the repairer at the point of the repair regardless if it is an inter or intrastate transaction.

⁷⁵ ND: *Id.*

⁷⁶ ND: *Id.*

⁷⁷ ND: *Id.*

State ¹	Interstate destination-based ²	Intrastate destination-based ³	Interstate origin-based ⁴	Intrastate origin-based ⁵	Interstate sourcing to location of repairs ⁶	Intrastate sourcing to location of repairs ⁷	Interstate sourcing to where repaired item delivered ⁸	Intrastate sourcing to where repaired item delivered ⁹
Rhode Island	Yes	Not Applicable	No	Not Applicable	Yes	Not Applicable	Yes	Yes
South Dakota	Yes	Yes	No	No	No	No	Yes	Yes
Tennessee	No ⁷⁸	No ⁷⁹	No	No ⁸⁰	Yes ⁸¹	Yes ⁸²	No ⁸³	No
Texas	No ⁸⁴	No ⁸⁵	Yes ⁸⁶	Yes ⁸⁷	No ⁸⁸	Depends ⁸⁹	Yes	Depends ⁹⁰
Utah	Yes	No	No	Yes	Yes	No Response ⁹¹	Yes	No Response ⁹²
Vermont	Yes	Yes	No	No	Yes ⁹³	Yes ⁹⁴	No ⁹⁵	No ⁹⁶
Virginia	Yes	No	No ⁹⁷	Yes	Not Applicable	Not Applicable ⁹⁸	Not Applicable ⁹⁹	Not Applicable ¹⁰⁰
Washington	Yes	Yes	No	No ¹⁰¹	No ¹⁰²	No ¹⁰³	Yes ¹⁰⁴	Yes

⁷⁸ TN: If the transfer of title or possession, or both, exchange, lease or rental of property takes place in Tennessee a sale has occurred in Tennessee. See Tenn. Code Ann. §67-6-102(78)(A). Destination does not always determine sourcing. See Important Notice issued October 2001.

⁷⁹ TN: Generally, intrastate transaction receipts are sourced to the dealer's location from which sales are shipped or from which they are delivered. See Tenn. Comp. R. & Reg. 1320-5-2-.05.

⁸⁰ TN: *Id.*

⁸¹ TN: See *LeTourneau Sales & Serv., Inc. v. Olsen*, 691 S.W.2d 531 (Tenn. 1985).

⁸² TN: Answer assumes that the repair takes place at the dealer's location in Tennessee.

⁸³ TN: See *LeTourneau Sales & Serv., Inc. v. Olsen*, 691 S.W.2d 531 (Tenn. 1985). Answer assumes that repair does not take place at the customer/buyer's location.

⁸⁴ TX: Tangible personal property sold under a sales contract that is shipped to a point outside of Texas by the seller is exempted from Texas sales tax. This exemption applies to repaired items when the repair is made in Texas, but the repaired item is delivered by the seller to the purchaser to a location outside of Texas. Services made taxable on or after October 1, 1987 are exempt to the extent the service is used outside of Texas.

⁸⁵ TX: Origin sourcing is used to determine the place of sale and the location where sales tax is due for sales of tangible personal property and most taxable services. Additionally, use tax may be due based on where the purchaser first stores or uses the taxable item, or receives benefit of the service. See Rule 3.334.

⁸⁶ TX: Tangible personal property sold under a sales contract that is shipped to a point outside of Texas by the seller is exempted from Texas sales tax. This exemption applies to repaired items when the repair is made in Texas, but the repaired item is delivered by the seller to the purchaser to a location outside of Texas. Services made taxable on or after October 1, 1987 are exempt to the extent the service is used outside of Texas.

⁸⁷ TX: Origin sourcing is used to determine the place of sale and the location where sales tax is due for sales of tangible personal property and most taxable services. Additionally, use tax may be due based on where the purchaser first stores or uses the taxable item, or receives benefit of the service. See Rule 3.334.

⁸⁸ TX: Tangible personal property sold under a sales contract that is shipped to a point outside of Texas by the seller is exempted from Texas sales tax. This exemption applies to repaired items when the repair is made in Texas, but the repaired item is delivered by the seller to the purchaser to a location outside of Texas. Services made taxable on or after October 1, 1987 are exempt to the extent the service is used outside of Texas.

⁸⁹ TX: Depends on type of service. Origin sourcing is used to determine the place of sale and the location where sales tax is due for sales of tangible personal property and most taxable services. Additionally, use tax may be due based on where the purchaser first stores or uses the taxable item, or receives benefit of the service. See Rule 3.334.

⁹⁰ TX: *Id.*

⁹¹ UT: The seller may elect to determine the location of a sale, lease, or rental of a service if the seller makes any sale, lease, or rental of tangible personal property. If this provision is not met, the service is sourced where the service takes place.

⁹² UT: *Id.*

⁹³ VT: Vermont does not subject repair services to the Sales Tax. However, materials for some services are subject to tax.

⁹⁴ VT: *Id.*

⁹⁵ VT: *Id.*

⁹⁶ VT: *Id.*

⁹⁷ VA: Virginia uses destination based sourcing for interstate sales.

⁹⁸ VA: Generally, Virginia does not tax the sale of services.

⁹⁹ VA: *Id.*

¹⁰⁰ VA: *Id.*

¹⁰¹ WA: Sales of motor vehicles, boats, trailers, and sales by qualified florists are excluded from destination sourcing and are sourced by on the location from which delivery is made to the customer.

¹⁰² WA: Retail service such as repairs are sourced to the location where the repaired item is delivered to the customer, if that is the same place as where the repairs occur, the sales are sourced to where the repairs are performed.

¹⁰³ WA: *Id.*

¹⁰⁴ WA: Only if as part of the repair contract the vendor is required to ship the item to the customer to a location outside of WA.

State ¹	Interstate destination-based ²	Intrastate destination-based ³	Interstate origin-based ⁴	Intrastate origin-based ⁵	Interstate sourcing to location of repairs ⁶	Intrastate sourcing to location of repairs ⁷	Interstate sourcing to where repaired item delivered ⁸	Intrastate sourcing to where repaired item delivered ⁹
West Virginia	Yes ¹⁰⁵	Yes ¹⁰⁶	No	No ¹⁰⁷	No ¹⁰⁸	No ¹⁰⁹	Yes ¹¹⁰	Yes ¹¹¹
Wisconsin ¹¹²	Yes	Yes	No	No	No ¹¹³	No ¹¹⁴	Yes ¹¹⁵	Yes ¹¹⁶
Wyoming	Yes ¹¹⁷	Yes ¹¹⁸	No Response ¹¹⁹	No ¹²⁰	No ¹²¹	No ¹²²	Yes ¹²³	Yes ¹²⁴

¹⁰⁵ WV: See W.Va. Code § 11-15B-15.

¹⁰⁶ WV: *Id.*

¹⁰⁷ WV: *Id.*

¹⁰⁸ WV: *Id.*

¹⁰⁹ WV: *Id.*

¹¹⁰ WV: *Id.*

¹¹¹ WV: *Id.*

¹¹² WI: Under Streamlined Sales Tax, Wisconsin adopted uniform sourcing rules in Sec. 77.522, Wis. Stats. (2015-16), which have a destination-based sourcing hierarchy. It only reverts to origination-based sourcing if the transaction does not fall under any other part of the sourcing hierarchy.

¹¹³ WI: Generally, a service is sourced to location where buyer makes first use of the service, which for repair services will generally be the location where buyer regains possession of the repaired item. Exceptions may apply. Place of sale determined under sourcing hierarchy in Sec. 77.522, Wis. Stats. (2015-16).

¹¹⁴ WI: *Id.*

¹¹⁵ WI: *Id.*

¹¹⁶ WI: *Id.*

¹¹⁷ WY: Generally speaking the location where a customer receives or takes receipt of tangible personal property is the location where sales tax is sourced. With regard to services the location where the customer receives the sourced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax. However, our sourcing rules do provide for the sourcing of sales tax when it cannot be determined where the customer receives the property or service. (See W.S. 39-15-102(f)(i).)

¹¹⁸ WY: *Id.*

¹¹⁹ WY: Wyoming sources tax to the location where the customer receives the property or is able to make first use of the property, whichever occurs first. But as noted our sourcing rules do provide for the sourcing of tax to the location from which tangible personal property was shipped, from which the digital good or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided when no information about the purchaser, purchaser's agent, or delivery location is available. (See W.S. 39-15-104(f)(i).)

¹²⁰ WY: Generally speaking the location where a customer receives or takes receipt of tangible personal property is the location where sales tax is sourced. With regard to services the location where the customer receives the sourced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax. However, our sourcing rules do provide for the sourcing of sales tax when it cannot be determined where the customer receives the property or service. (See W.S. 39-15-102(f)(i).)

¹²¹ WY: *Id.*

¹²² WY: *Id.*

¹²³ WY: *Id.*

¹²⁴ WY: *Id.*

Sales Tax Policies: Sourcing and Method of Delivery (Part 2 of 2)

Which method does your state use to source amounts paid for canned or prewritten software that is accessed by, but not delivered to, a customer in your state:

State ¹	Delivery method affects "TPP" ²	In-state customers remotely accessing software on server ³	Location of the server ⁴	Customer's billing address ⁵	Where the software is used ⁶	Other ⁷
Alabama	No	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Arizona ⁸	No	Yes	No	No	No	Yes ⁹
Arkansas	Yes	No	No	No	Yes	No
California ¹⁰	Yes	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable ¹¹
Colorado	No	Yes	No	No	Yes	No
Connecticut	Yes¹²	Yes¹³	No	No	Yes	No
District of Columbia	No	Yes	Yes	No	Yes	No
Florida	Yes	No ¹⁴	No	No	No	Yes ¹⁵
Georgia	Yes	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	No	Yes	No	No	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² Does the method by which an item is delivered from a remote seller to a purchaser in your state affect whether the item is taxed as tangible personal property (e.g., canned software delivered on a DVD or CD ROM versus electronic download)?

³ Are amounts paid by in-state customers to remotely access canned or prewritten software that is hosted on a server subject to sales or use tax in your state?

⁴ Does your state source amounts paid for software that is accessed, but not delivered, to a customer in your state by the location of the server?

⁵ Does your state source amounts paid for software that is accessed, but not delivered, to a customer in your state by the customer's billing address?

⁶ Does your state source amounts paid for software that is accessed, but not delivered, to a customer in your state by where the software is used?

⁷ Does your state source amounts paid for software that is accessed, but not delivered, to a customer in your state by something other than the location of the server, the customer's billing address or the location where the software is used?

⁸ AZ: Answers assume "interstate" means an order is received from an out-of-state location and "intrastate" means an order is received from an in-state location. Answers apply to state and county taxes only unless stated otherwise.

⁹ AZ: If the lessor has an in-state business location, the sale is sourced to the in-state business location as it appears on the lessor's TPT license. If the lessor does not have an in-state business location, the sale is sourced to the lessee's address. This rule applies for sourcing purposes only; whether a particular transaction is subject to TPT is a separate issue generally determined by where the leased property is used.

¹⁰ CA: In all instances, the "source" is the place where the property is physically located at the time the act constituting the sale or purchase takes place.

¹¹ CA: If the software is accessed remotely and the customer does not receive any tangible personal property, it does NOT matter where the software is "sourced" as there is no taxable transaction.

¹² CT: **Canned software is taxed as tangible personal property if delivered on a DVD or CD ROM; if delivered via electronic download, canned software is taxed as a computer service.** See Policy Statement 2004(2) and Policy Statement 2006(8).

¹³ CT: See Policy Statement 2004(2) and Policy Statement 2006(8).

¹⁴ FL: Charges to rent or use another person's server in Florida are taxable.

¹⁵ FL: Software accessed or downloaded electronically is not subject to Florida sales and use tax.

**Which method does your state use to source amounts paid for
canned or prewritten software that is accessed by, but not delivered
to, a customer in your state:**

State ¹	Delivery method affects "TPP" ²	In-state customers remotely accessing software on server ³	Location of the server ⁴	Customer's billing address ⁵	Where the software is used ⁶	Other ⁷
Idaho	Yes ¹⁶	No	Not Applicable ¹⁷	Not Applicable ¹⁸	Not Applicable ¹⁹	Not Applicable ²⁰
Illinois ²¹	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No Response ²²	No Response ²³	No Response ²⁴	No Response ²⁵
Iowa	Yes	No	No	No	Yes	No
Kansas	No	No	No	No	No	Yes ²⁶
Kentucky	No	No	Not Applicable ²⁷	Not Applicable ²⁸	Not Applicable ²⁹	Not Applicable ³⁰
Louisiana ³¹	No Response	No Response	No Response	No Response	No Response	No Response
Maine	No	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Maryland	Yes	No	No	No	No	Yes ³²
Massachusetts ³³	No	Depends	No	No	No	Yes ³⁴
Michigan	No Response ³⁵	Yes	No	No	No	Yes ³⁶
Minnesota	No ³⁷	Depends ³⁸	No	No	No	Yes ³⁹
Mississippi	Yes	No	No	No	No	Yes⁴⁰

¹⁶ ID: A sale of canned software is taxable only if it is delivered on tangible storage media.

¹⁷ ID: Charges for remotely accessed computer software are not taxable.

¹⁸ ID: *Id.*

¹⁹ ID: *Id.*

²⁰ ID: *Id.*

²¹ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

²² IN: The transaction would be sourced first to where the TPP is used. If that information is not available, it would be sourced to where the customer was billed.

²³ IN: *Id.*

²⁴ IN: *Id.*

²⁵ IN: *Id.*

²⁶ KS: Not taxable.

²⁷ KY: Do not currently tax.

²⁸ KY: *Id.*

²⁹ KY: *Id.*

³⁰ KY: *Id.*

³¹ LA: The Department has no position on this issue at this time.

³² MD: **Software is taxed only if transferred in tangible format and is based on where delivered.**

³³ MA: See 830 CMR 63.38.1.

³⁴ MA: Canned software treated as TPP whether delivered on a tangible medium or otherwise. Sourced to Mass if shipped to purchaser in MA - destination rule. Custom software - income-producing activity is deemed to be performed in MA to the extent by licensee in MA. See 830 CMR 63.38.1(9)(e).

³⁵ MI: Sale of canned software is subject to tax regardless how it is delivered. Sale of digital goods (e.g., digital books) is not subject to tax, though sale of tangible form of the same product (e.g., physical copies of the same books) is subject to tax.

³⁶ MI: The sale would be sourced to the purchaser's address available from the seller's business records, or if that address is not available, to an address for the purchaser obtained at the completion of the sale. See MCL 205.69(1)(c)-(d).

³⁷ MN: Prewritten software is always taxable regardless of method of delivery.

³⁸ MN: If the server is located in MN and the purchaser has title/possession of the software hosted on the server, the sale is subject to MN tax.

³⁹ MN: Remote access to software or software as a service is not taxable.

⁴⁰ MS: Mississippi taxes the sales or use of software in Mississippi. Software accessed via the internet and not loaded on the customer's computer is not considered a taxable service. Download of the software for use on a computer in Mississippi is subject to Mississippi sales or use tax.

State ¹	Delivery method affects "TPP" ²	In-state customers remotely accessing software on server ³	Which method does your state use to source amounts paid for canned or prewritten software that is accessed by, but not delivered to, a customer in your state:			
			Location of the server ⁴	Customer's billing address ⁵	Where the software is used ⁶	Other ⁷
Missouri	Yes ⁴¹	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Nebraska	No	No	Yes ⁴²	No ⁴³	No ⁴⁴	No ⁴⁵
Nevada	Yes	No	Not Applicable ⁴⁶	Not Applicable ⁴⁷	Not Applicable ⁴⁸	Not Applicable ⁴⁹
New Jersey	No	No	No Response ⁵⁰	No Response ⁵¹	No Response ⁵²	No Response ⁵³
New Mexico	No	Yes	No	No	Yes	No
New York	No	Yes	No	No	Yes ⁵⁴	No
North Carolina	No	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
North Dakota	No ⁵⁵	No ⁵⁶	Yes	No	No	No
Pennsylvania	Yes ⁵⁷	Yes	No	No	Yes	No
Rhode Island	Yes ⁵⁸	No ⁵⁹	Yes ⁶⁰	No ⁶¹	No ⁶²	No ⁶³
South Dakota	No	Yes	No Response ⁶⁴	No Response ⁶⁵	No Response ⁶⁶	No Response ⁶⁷
Tennessee	No	Yes ⁶⁸	No ⁶⁹	No ⁷⁰	Yes ⁷¹	No ⁷²

⁴¹ MO: Missouri doesn't tax repair services although the sale of tangible personal property related to a repair is taxable.

⁴² NE: The sale of software is sourced to the location of the server. Charges for accessing remote software are not taxed.

⁴³ NE: *Id.*

⁴⁴ NE: *Id.*

⁴⁵ NE: *Id.*

⁴⁶ NV: The State does not tax any software that is delivered or accessed electronically.

⁴⁷ NV: *Id.*

⁴⁸ NV: *Id.*

⁴⁹ NV: *Id.*

⁵⁰ NJ: Sourced 54:32B-3.1.

⁵¹ NJ: *Id.*

⁵² NJ: *Id.*

⁵³ NJ: *Id.*

⁵⁴ NY: *See* Adobe Systems, Inc., TSB-A-08(62)S.

⁵⁵ ND: It would depend on whether the invoice is lump-sum billed or not. Under lump-sum bills, the tax is due by the repairer at the point of the repair regardless if it is an inter or intrastate transaction.

⁵⁶ ND: Software is always taxable as tangible physical property regardless [of] how it is transferred or purchased.

⁵⁷ PA: Except for canned software, an item must be delivered on a tangible medium for it to be taxable.

⁵⁸ RI: Prewritten computer software and prewritten computer software maintenance agreements (upgrades) delivered electronically are subject to tax effective 10/1/2011.

⁵⁹ RI: Amount paid to remotely access canned or prewritten software that is hosted on a server is not subject to tax provided there is no downloading of prewritten computer software.

⁶⁰ RI: Tax is sourced to the server location. If software is electronically delivered directly to a computer, it is sourced to the location the software is delivered to.

⁶¹ RI: *Id.*

⁶² RI: *Id.*

⁶³ RI: *Id.*

⁶⁴ SD: We would look first to the location of the customer or where they take possession. If this is unknown, then we would look to the customer's billing address.

⁶⁵ SD: *Id.*

⁶⁶ SD: *Id.*

⁶⁷ SD: *Id.*

⁶⁸ TN: *See* Tenn. Code Ann. §67-6-231.

⁶⁹ TN: *Id.*

⁷⁰ TN: *Id.*

⁷¹ TN: *Id.*

⁷² TN: *Id.*

**Which method does your state use to source amounts paid for
canned or prewritten software that is accessed by, but not delivered
to, a customer in your state:**

State ¹	Delivery method affects "TPP" ²	In-state customers remotely accessing software on server ³	Location of the server ⁴	Customer's billing address ⁵	Where the software is used ⁶	Other ⁷
Texas	No	Yes	No	No	No	Yes ⁷³
Utah	No	Yes	No	Yes	Yes	No
Vermont	No Response ⁷⁴	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia	Yes ⁷⁵	No	No Response ⁷⁶	No Response ⁷⁷	No Response ⁷⁸	No Response ⁷⁹
Washington	No ⁸⁰	Yes ⁸¹	No	No	Yes	No
West Virginia	No	No	No ⁸²	No ⁸³	Yes ⁸⁴	No ⁸⁵
Wisconsin	No ⁸⁶	No Response ⁸⁷	No Response ⁸⁸	No Response ⁸⁹	No Response ⁹⁰	No Response ⁹¹
Wyoming	No	No ⁹²	No ⁹³	No ⁹⁴	No ⁹⁵	Yes ⁹⁶

⁷³ TX: Texas taxes software access as a data processing service rather than the sale of software. Therefore, for intrastate sales, Texas local sales tax is based on the location of the service provider and Texas tax is presumed to be due if the seller and purchaser are both in Texas. A purchaser who will use the software both in and out of Texas may, in some circumstances, claim multi-state benefit and issue an exemption certificate to the seller; purchaser is then responsible for accruing tax on the portion used in Texas. For interstate sales where customer is located outside of Texas, Texas tax is not due if software will not be used in Texas.

⁷⁴ VT: Method of delivery does not affect taxability for digital downloads. Methods of delivery may affect taxability of other products such as photographs.

⁷⁵ VA: The Department of Taxation generally holds that transactions involving data accessed online are nontaxable service transactions (see P.D. 97-405).

⁷⁶ VA: Not Taxable.

⁷⁷ VA: *Id.*

⁷⁸ VA: *Id.*

⁷⁹ VA: *Id.*

⁸⁰ WA: Sales of prewritten computer software are subject to sales tax whether delivered on tangible medium (CD or DVD) or delivered electronically. Other items are deemed "retail sales" of digital products, but may not be classified as tangible items (see RCW 82.04.050).

⁸¹ WA: Sales of prewritten computer software are treated as sales of tangible personal property and subject to sales tax whether delivered on tangible medium (CD or DVD) or downloaded. This answer may not apply to other "items."

⁸² WV: W. Va. Code §11-15B-14(a)(3) would allow digital goods to be sourced to the state in which first use of the digital goods occurred.

⁸³ WV: *Id.*

⁸⁴ WV: *Id.*

⁸⁵ WV: *Id.*

⁸⁶ WI: Under Streamlined Sales Tax, Wisconsin adopted uniform sourcing rules in Sec. 77.522, Wis. Stats. (2015-16), which have a destination-based sourcing hierarchy. It only reverts to origination-based sourcing if the transaction does not fall under any other part of the sourcing hierarchy.

⁸⁷ WI: For prewritten software that is physically located outside of Wisconsin, the purchaser's use tax liability is incurred as of the time when the software is used by the purchaser or the purchaser's agent from a location in Wisconsin. Please refer to Answer #4 & #5 of the Frequently Asked Questions (FAQs) entitled Computer — Hardware, Software, Services; Sales occurring on and after October 1, 2009, found on the Department's web site at: www.revenue.wi.gov/faqs/pcs/computer.html.

⁸⁸ WI: For prewritten computer software, the method of delivery does not matter. By definition, prewritten computer software is tangible personal property regardless of the method in which it is delivered. However, for other items the method of delivery does make a difference. For example, music sold on a CD is taxed as tangible personal property, but music downloaded via the Internet is taxed as a specific digital good. Please refer to Common Questions entitled Computer — Hardware, Software, Services; Sales occurring on and after October 1, 2009, found on the Department's website at: www.revenue.wi.gov/faqs/pcs/computer.html.

⁸⁹ WI: *Id.*

⁹⁰ WI: *Id.*

⁹¹ WI: *Id.*

⁹² WY: In order for a sale to occur, per Wyoming statute there must be an exchange of tangible personal property or taxable service for consideration. (See W.S. 39-15-101(a)(vii).) According to the simple facts presented in this question, consideration is provided; however, the customer does not receive any property or service in exchange. As such, Wyoming does not consider this a sale and, therefore, does not impose sales tax on this transaction.

⁹³ WY: *Id.*

⁹⁴ WY: *Id.*

⁹⁵ WY: *Id.*

⁹⁶ WY: *Id.*

Sales Tax Policies: Sharing Economy

State ¹	Collection obligation imposed on 3rd party vendor for transportation services ²	Collection obligation imposed on 3rd party for provision of short-term accommodations ³	Collection obligation imposed on owner for provision of short-term accommodations ⁴	Collection obligation imposed on 3rd party for short-term rental of owner's vehicles ⁵	Collection obligation imposed on owner for short-term rental of owner's vehicles ⁶
Alabama	Not Applicable	Yes	Yes	Yes	No
Arizona	No	Yes ⁷	No ⁸	No Response ⁹	No Response ¹⁰
Arkansas	No	Yes	Yes	Yes	Yes
California	No ¹¹	No ¹²	No ¹³	No Response ¹⁴	No Response ¹⁵
Colorado	No ¹⁶	Yes ¹⁷	Yes ¹⁸	Yes ¹⁹	Yes ²⁰
Connecticut ²¹	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes
Georgia ²²	Depends	Depends	Depends	Depends	Depends

¹ The questions in this chart are all appearing for the first time in 2017. As a result, none of the responses are in bold.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL, OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² For transactions for the provision of transportation services for passengers that are arranged by a third party vendor (e.g., Uber or Lyft), does your state impose the tax collection obligation on the third party vendor?

³ For transactions for the provision of short-term accommodations that are facilitated by a third party (e.g., Airbnb), does your state impose the tax collection obligation on the third party?

⁴ For transactions for the provision of short-term accommodations that are facilitated by a third party (e.g., Airbnb), does your state impose the tax collection obligation on the owner of the accommodations?

⁵ For transactions for the short-term rental of owners' vehicles facilitated by a third party (e.g., GetAround, RelayRides), does your state impose the tax collection obligation on the third party?

⁶ For transactions for the short-term rental of owners' vehicles facilitated by a third party (e.g., GetAround, RelayRides), does your state impose the tax collection obligation on the owner of the vehicle?

⁷ AZ: A.R.S. 42-5076 provides that an online lodging marketplace that has entered into an agreement with the Department of Revenue is subject to tax under the online lodging marketplace classification. An owner (operator) of online lodging accommodations that offers its online lodging accommodations through an online lodging marketplace is not subject to tax if they receive documentation that the online lodging marketplace is licensed with the Department of Revenue and that the online lodging marketplace has remitted or will remit the applicable tax to the Department of Revenue.

⁸ AZ: *Id.*

⁹ AZ: The Department of Revenue has not addressed this type of transaction. However, the rental of tangible personal property, including motor vehicles is subject to tax. The lessor of the vehicle is subject to tax. The contractual agreements would determine the appropriate taxable party.

¹⁰ AZ: *Id.*

¹¹ CA: Sales and Use tax do not apply to the provision of transportation services or accommodations.

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CA: When tax applies to a lease, the lessor must collect the tax from the lessee (see Reg. 1660, subd. (c)), and whether the third party or the owner is the lessor required to collect tax depends on the structure of the transaction between the parties (i.e. lease by the owner with third party acting as agent, lease by owner to third party and sublease by third party, etc.).

¹⁵ CA: *Id.*

¹⁶ CO: Taxi-type arrangements are considered a non-taxable service and not short term rental of vehicle.

¹⁷ CO: Joint liability. See 39-26-103(9)(e), C.R.S. (representatives of vendor jointly liable for tax).

¹⁸ CO: *Id.*

¹⁹ CO: Joint liability. See 39-26-103(9)(e), C.R.S. (representatives of vendor jointly liable for tax). Short term rental of tangible personal property.

²⁰ CO: Joint liability. See 39-26-103(9)(e), C.R.S. (representatives of vendor jointly liable for tax).

²¹ CT: No published guidance.

²² GA: The tax treatment would depend on the precise activity of each party to the transaction as well as on the relevant contractual terms.

State ¹	Collection obligation imposed on 3rd party vendor for transportation services ²	Collection obligation imposed on 3rd party for provision of short-term accommodations ³	Collection obligation imposed on owner for provision of short-term accommodations ⁴	Collection obligation imposed on 3rd party for short-term rental of owner's vehicles ⁵	Collection obligation imposed on owner for short-term rental of owner's vehicles ⁶
Hawaii ²³	No	No	No	No	No
Idaho	No	No ²⁴	Yes	No	Yes
Illinois ²⁵	No Response	No Response	No Response	No Response	No Response
Indiana	No	No ²⁶	Yes ²⁷	No	Yes
Iowa	Yes ²⁸	Yes ²⁹	Yes ³⁰	Yes ³¹	Yes ³²
Kansas	No Response	No Response	No Response	No Response	No Response
Kentucky	Not Applicable	Yes	Yes	Not Applicable	Not Applicable
Louisiana	No	Yes	Yes	No	No
Maine	No ³³	No ³⁴	Yes	No ³⁵	No ³⁶
Maryland	Yes ³⁷	Yes ³⁸	Yes ³⁹	Yes ⁴⁰	Yes ⁴¹
Massachusetts	Not Applicable	No	No	Yes ⁴²	Yes ⁴³
Michigan	Not Applicable	No	Yes	No ⁴⁴	Yes
Minnesota	No	Yes	No	No Response ⁴⁵	No Response ⁴⁶

²³ HI: Hawaii does not have a sales tax and does not have a trust provision to require anyone to collect the tax on behalf of the taxpayer.

²⁴ ID: Although Idaho does not impose the tax collection obligation on the third party, some third-party facilitators collect the tax on behalf of the owner of short-term accommodations.

²⁵ IL: See Ill. Dept. of Rev., Illinois General Information Letter ST 17-0007-GIL (Mar. 2, 2017).

²⁶ IN: May be subject to change effective 7/1/2017.

²⁷ IN: *Id.*

²⁸ IA: The third-party vendor is responsible for collecting any tax due. However, taxi service is not a taxable service in Iowa.

²⁹ IA: The third-party and the owner are jointly responsible for collecting any tax due.

³⁰ IA: *Id.*

³¹ IA: *Id.*

³² IA: *Id.*

³³ ME: The answer may be "yes" if the third party vendor is setting the price or if the facts otherwise support imposition of Maine sales tax collection obligation.

³⁴ ME: *Id.*

³⁵ ME: *Id.*

³⁶ ME: *Id.*

³⁷ MD: Local jurisdictions are given the authority to impose a fee on transportation network services. In those instances where a local fee is imposed, the collection obligation is placed on the third party vendor.

³⁸ MD: An accommodations intermediary who facilitates the sale or use of an accommodation and charges a buyer the taxable price for the accommodation is responsible for the collection of the sales and use tax.

³⁹ MD: If an accommodations intermediary fails to collect the sales and use tax, the accommodations provider is responsible for the sales and use tax.

⁴⁰ MD: An intermediary who facilitates the short-term rental of owners' vehicles is responsible for the collection of the sales and use tax.

⁴¹ MD: If an intermediary fails to collect the sales and use tax, the owner of the vehicle is for the collecting the sales and use tax due on a short-term vehicle rental.

⁴² MA: If Mass does not have nexus, obligation is on the owner.

⁴³ MA: *Id.*

⁴⁴ MI: See RAB 1988-39.

⁴⁵ MN: Generally speaking, the answer is yes, if these third parties are facilitating these transactions in the same manner as third parties for short-term lodging, etc. However, the state of Minnesota has not yet explored this industry.

⁴⁶ MN: *Id.*

State ¹	Collection obligation imposed on 3rd party vendor for transportation services ²	Collection obligation imposed on 3rd party for provision of short-term accommodations ³	Collection obligation imposed on owner for provision of short-term accommodations ⁴	Collection obligation imposed on 3rd party for short-term rental of owner's vehicles ⁵	Collection obligation imposed on owner for short-term rental of owner's vehicles ⁶
Mississippi	No	Yes ⁴⁷	Yes	Yes ⁴⁸	Yes
Missouri	No	No	Yes	No ⁴⁹	Yes
Nebraska	Not Applicable ⁵⁰	No Response	No Response	No Response	No Response
Nevada ⁵¹	Not Applicable	No	Yes	No	Yes
New Jersey	No	No	No ⁵²	No	Yes ⁵³
New Mexico	Yes	Yes	Yes	Yes	Yes
New York	No Response	No Response	Yes	No Response ⁵⁴	Yes
North Carolina	Not Applicable	Yes ⁵⁵	Yes ⁵⁶	Not Applicable ⁵⁷	Not Applicable ⁵⁸
North Dakota	No	No	No	No	No
Pennsylvania	Not Applicable ⁵⁹	No	Yes	Yes	Yes ⁶⁰
Rhode Island	Yes	Yes	No	Yes	No
South Dakota	Yes	No	Yes	No Response ⁶¹	No Response ⁶²
Tennessee	Not Applicable	No	Yes	No Response ⁶³	No Response ⁶⁴
Texas	Not Applicable ⁶⁵	No Response ⁶⁶	No Response ⁶⁷	No Response ⁶⁸	No Response ⁶⁹
Utah	No	No	Yes	No	No

⁴⁷ MS: The third party would be responsible for collecting and remitting sales tax if they have nexus in Mississippi, otherwise the owner would be responsible for collecting and remitting the sales tax.

⁴⁸ MS: *Id.*

⁴⁹ MO: Unless tax was paid on the vehicle at the time of titling and registration.

⁵⁰ NE: Transportation services are not taxable in Nebraska.

⁵¹ NV: The state does not impose a sales tax on transportation services however the state has a separate transportation connection tax imposed on the transportation company. *See* NRS 372B.

⁵² NJ: Answer assumes that the accommodation does not meet the definition of a hotel. *See* N.J.S.A. 54:32B-2(j); N.J.A.C. 18:24-3.2.

⁵³ NJ: Answer assumes that the rental is without an operator, and is the rental of tangible personal property. *See* N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-2(f).

⁵⁴ NY: A third party can be held jointly liable for the tax as a co-vendor. *See* Regulation 526.10(e).

⁵⁵ NC: Possible exceptions in G.S. 105-164.4F.

⁵⁶ NC: *Id.*

⁵⁷ NC: Possible exception in G.S. 105-187.5(a). Rentals of motor vehicles if taxable are subject to Highway Use Tax and exempt from sales and use taxes.

⁵⁸ NC: *Id.*

⁵⁹ PA: Transportation services are not subject to sales tax.

⁶⁰ PA: The vehicles owner must collect the tax when the 3rd party does not have nexus and is not licensed to collect the tax.

⁶¹ SD: TBD. South Dakota has not made a policy decision regarding [these services] at this time.

⁶² SD: *Id.*

⁶³ TN: The Department is currently finalizing its policy on the sharing economy and will release its administrative procedures on a future date.

⁶⁴ TN: *Id.*

⁶⁵ TX: Transportation services are not taxable in Texas. *See* Texas Tax Code Section 151.0101.

⁶⁶ TX: Texas imposes hotel occupancy tax collection obligation on a person owning, operating, managing, or controlling a building in which members of the public obtain sleeping accommodations. *See* Texas Tax Code Sections 156.053 and 156.001.

⁶⁷ TX: *Id.*

⁶⁸ TX: A tax is imposed on gross rental receipts from the rental of a motor vehicle rented in Texas. *See* Texas Tax Code Section 152.026. Tax collection obligation depends on the agreement between the motor vehicle owner and the third party.

⁶⁹ TX: *Id.*

State ¹	Collection obligation imposed on 3rd party vendor for transportation services ²	Collection obligation imposed on 3rd party for provision of short-term accommodations ³	Collection obligation imposed on owner for provision of short-term accommodations ⁴	Collection obligation imposed on 3rd party for short-term rental of owner's vehicles ⁵	Collection obligation imposed on owner for short-term rental of owner's vehicles ⁶
Vermont	No Response	No Response ⁷⁰	Yes ⁷¹	No Response	No Response
Virginia	Not Applicable	No	Yes	No	Yes
Washington	No ⁷²	Yes ⁷³	Yes	Yes	Yes
West Virginia	Yes	No	No	Yes	No
Wisconsin	Yes ⁷⁴	Depends	Depends	Yes	Depends
Wyoming	Not Applicable ⁷⁵	No Response ⁷⁶	No Response ⁷⁷	No Response ⁷⁸	No Response ⁷⁹

⁷⁰ VT: Third parties can agree to liability under Vermont law.

⁷¹ VT: Yes, but owner of accommodation can be relieved of if third party agrees to liability.

⁷² WA: Transportation services are not subject to retail sales tax.

⁷³ WA: Airbnb has entered into an agreement with WA DOR where they will collect and remit Retail Sales Tax on behalf of the owner of the accommodation.

⁷⁴ WI: Nexus is established for the third party vendor, but transportation services are not subject to Wisconsin sales and use tax.

⁷⁵ WY: These services are not available in Wyoming at this time. While a bill has been introduced for consideration in our current legislative session, it is unknown if it will be acted upon. Currently all companies that provide intrastate transportation of passengers are required to license for the collection of Wyoming sales tax on their taxable services. (See W.S. 39-15-101(a)(xv); W.S. 39-15-103(a)(i)(D); W.S. 39-15-106(a).)

⁷⁶ WY: See *Travelocity.com et al. v. Wyoming Department of Revenue*, 2014 WY 43, 329 P.3d 131 (2014). Wyoming recognizes two types of models for these companies, the merchant model and the travel agent model. In the merchant model, the third party enters into an agreement with a hotel to market and books hotel lodging services. As part of this arrangement, the hotel agrees to offer its lodging services at a discounted rate. The third party books reservations for the lodging services and collects a higher advertised sales price, taxes and fees for the services from the travelling customer. In turn the third party pays the hotel the discounted lodging rate and the tax associated with the discounted price, retaining the difference. Those companies operating under the merchant model are required to license for the collection of Wyoming sales tax. The hotel is responsible to remit the sales and lodging tax collected from the third party lodging seller and the third party lodging seller is required to remit the sales and lodging tax on the difference retained. (See W.S. 39-15-103(a)(i)(G).) Under the travel agent model, the agent merely facilitates the transaction but the guest pays the hotel directly for their stay. After travel, the hotel pays the travel agent a commission for their services. In this scenario, the hotel is responsible to collect and remit the full sales and lodging tax.

⁷⁷ WY: *Id.*

⁷⁸ WY: See *Travelocity.com et al. v. Wyoming Department of Revenue*, 2014 WY 43, 329 P.3d 131 (2014). Wyoming recognizes two types of models for these companies, the merchant model and the travel agent model. In the merchant model, the third party enters into an agreement with a hotel to market and books hotel lodging services. As part of this arrangement, the hotel agrees to offer its lodging services at a discounted rate. The third party books reservations for the lodging services and collects a higher advertised sales price, taxes and fees for the services from the travelling customer. In turn the third party pays the hotel the discounted lodging rate and the tax associated with the discounted price, retaining the difference. Those companies operating under the merchant model are required to license for the collection of Wyoming sales tax. The hotel is responsible to remit the sales and lodging tax collected from the third party lodging seller and the third party lodging seller is required to remit the sales and lodging tax on the difference retained. (See W.S. 39-15-103(a)(i)(G).) Under the travel agent model, the agent merely facilitates the transaction but the guest pays the hotel directly for their stay. After travel, the hotel pays the travel agent a commission for their services. In this scenario, the hotel is responsible to collect and remit the full sales and lodging tax. Those parties who act as vendors, renting tangible personal property for consideration, are responsible to license for the collection of Wyoming sales tax. We understand these businesses to operate under either the merchant model or the travel agent model discussed for similar lodging sellers. With that in mind, the responsibility for tax is also shared with the vehicle owner being responsible for sales tax on the portion paid to them and the third party being responsible for remitting sales tax on the remainder.

⁷⁹ WY: *Id.*

Sales Tax Nexus

Survey Identifies Activities That Create Sales Tax Nexus

Sales and use taxes, a primary revenue source for many states, have become more difficult to comply with as sales transactions have become more complicated and the internet has made it easier for remote sellers to sell into a state without physical contact. We asked the states questions about 129 specific activities that may create nexus, and instructed the states to assume the listed activity is the only activity the taxpayer has in the state. The states' answers to these questions revealed the complexity of sales tax nexus and the broad variation among the states.

Temporary or Sporadic Presence

The majority of states indicated that merely attending a trade show or seminar was not enough to create nexus. In contrast, the majority of states said that holding at least two, one-day seminars was sufficient to create nexus.

Furthermore, once a sale is made in a state, temporary presence is more likely to cause nexus. Thirty-three states indicated that making a sale or accepting orders at a trade show was enough to create sales tax nexus. Thirty-six states indicated that making sales while in the state for three or fewer days is enough to create nexus.

Click-Through Nexus

As electronic commerce continues to increase, the states are taking a closer look at whether arrangements with affiliates utilizing internet tools have the potential to create nexus.

Eighteen states indicated that using an internet link or entering into a linking arrangement with a third party in the state is sufficient to create nexus if the relationship results in sales under \$10,000. The number of states imposing nexus increases to 27 when the relationship results in more than \$10,000 in sales.

Making remote sales into a state and hiring a third party to refer a customer via internet click-through is also enough to create nexus in 15 states, up from 14 states last year.

Digital Property

Overall, the majority of states indicated that selling remote access to digital products would not create nexus, despite continued growth in this market.

Only eight states responded that selling remote access to canned software would create sales tax nexus. When the software is considered "custom," only four states indicated that remote sales would create nexus.

However, states almost unanimously agreed that nexus is created when a representative visits the state in order to customize canned software. Vermont and Virginia were the only states that did not impose nexus under these circumstances.

Twenty-four states indicated that the sale of data, such as music files, that is stored on an in-state server would create nexus, another result that seems to buck the general trend. The trend continues to hold true for other remote sales of digital content, however, which are also unlikely to create nexus for the vast majority of states.

Only five jurisdictions—Arizona, the District of Columbia, Hawaii, New Mexico and Tennessee—responded that, when the digital content is downloaded by residents of the state, nexus is created. The likelihood that such sales would create nexus is even lower when the digital content is accessed, but not downloaded, by residents. Only three of the five states impose nexus, with the District of Columbia and New Mexico responding "no."

Similarly, selling the digital version of a tangible magazine or newspaper would not create nexus in the majority of states.

For more information, see:

Sales and Use Tax Navigator at 3.1.

Portfolio 1420-2nd: Limitations on States' Jurisdiction to Impose Sales and Use Taxes

Portfolio 1380-1st: Sales and Use Taxes: Cloud Computing

Disaster Relief

For the first time, we asked whether entering the state solely for the purposes of providing disaster relief would create nexus. Nineteen states indicated that doing so was sufficient to create nexus, a result that most practitioners frowned upon.

“From a public policy standpoint, nexus should not be triggered if a company enters into a state to conduct disaster relief operations. In the aftermath of a disaster, companies should have the ability to offer assistance to the state and its residents without any nexus concerns factoring into this decision,” Priya D. Nair, a state and local tax manager at Grant Thornton’s National Tax Office in Washington, D.C., explained, adding that she hopes “more states will implement similar policies.”

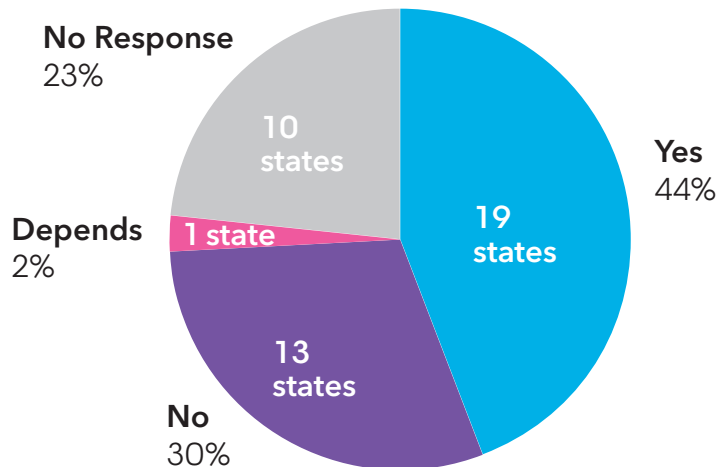
Moreover, others view such a result as a penalty for those providing assistance in a time of need. “I was actually surprised that a state would penalize somebody, which is really what they are doing. To penalize somebody by making them subject to tax when they are coming in because the telecommunications system is down, or there’s utilities down, makes no sense to me,” Marilyn Wethekam, a partner at Horwood Marcus & Berk Chartered in Chicago, Illinois, said.

Other practitioners, however, looked at the issue from the states’ perspective rather than a public safety perspective. “Certainly, when the emergency provider enters the state to deliver property or perform services, that creates nexus. It is state legislature’s prerogative to choose not to tax that activity,” Richard Cram, director of the Multistate Tax Commission’s National Nexus Program in Washington, D.C. told Bloomberg BNA.

“Part of the problem is that there’s many different kinds of disaster relief,” Brian Kirkell, a principal at RSM US LLP’s Washington National Tax Office, said, describing the difference between paid-for disaster relief services that operate much like insurance and volunteer services or low-cost services in order to benefit the state’s citizens.

“I see a real distinction between the two [types of disaster relief] and states are trying to figure out how to deal with that distinction. And you’ve seen more and more states saying, ‘hey, when it is your business activity to go in and do this type of recovery work, yeah, you do have nexus resulting from it. When it’s not—and you’re coming in to help people who have been displaced or something like that, we’re going to give you a break,’ ” he added.

Does Entering State for Disaster Relief Efforts Trigger Nexus?



Note: DC and NYC are treated as states for the purposes of this chart. AK, DE, MT, NH and OR do not impose a sales and use tax. NYC, OH, OK and SC did not participate in this portion of the survey. As a result, these 9 states are not included in this chart.

Source: Bloomberg BNA 2017 Survey of State Tax Departments

Nexus-Creating Activities: Sales and Use Tax — General Activities

State ¹	Reimburse-ments for in-home office ²	Maintains bank account ³	Maintains a P.O. box ⁴	Local telephone books ⁵	Local phone numbers ⁶	800 phone numbers ⁷
Alabama	Yes	No	Yes	No	No	No
Arizona ⁸	No	No	No	No	No	No
Arkansas	Yes	No	No	No	No	No
California	Yes	No	Yes ⁹	No	No	No
Colorado	No	No	Yes ¹⁰	No	Yes	No
Connecticut ¹¹	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	No	Yes	No
Florida ¹²	Yes	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	No	Depends	Yes	Depends	Depends
Hawaii	Yes	No	Yes	Yes	Yes	No
Idaho	Yes	No Response ¹³	No Response ¹⁴	No Response ¹⁵	No Response ¹⁶	No
Illinois ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and reimburses its in-state salespersons for the costs of maintaining an in-home office.

³ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and maintains a bank account in your state.

⁴ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and maintains a post office box in your state.

⁵ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and is listed in the local telephone books of cities in your state.

⁶ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and uses local phone numbers in your state, which are forwarded to its headquarters in another state.

⁷ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and makes sales to customers in your state by means of an 800 telephone order number and advertises in your state.

⁸ AZ: Answers assume delivery of purchases is made by U.S. mail or common carrier and not by the corporation or its employees or agents.

⁹ CA: This assumes that the post office box is used for some type of selling activity such as receiving orders and that an in-state employee or representative processes the orders received in the post office box. The mere maintenance of a post office box, with no connection to any selling activity, would not create nexus.

¹⁰ CO: If the P.O. box is advertised as receiving orders.

¹¹ CT: DRS has no published position.

¹² FL: Nexus is considered on a case-by-case basis.

¹³ ID: The Tax Commission has made no rulings on this fact situation.

¹⁴ ID: *Id.*

¹⁵ ID: *Id.*

¹⁶ ID: *Id.*

¹⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Reimburse- ments for in-home office ²	Maintains bank account ³	Maintains a P.O. box ⁴	Local telephone books ⁵	Local phone numbers ⁶	800 phone numbers ⁷
Kansas	Yes	No	No	No	No	No
Kentucky	Yes	No	No	No	No	No
Louisiana	Yes	No	No	No	No	No
Maine	Yes	No	No	No	No	No
Maryland	Yes	No	Yes	No	No	No
Massachusetts	No	Yes	No Response	No	No	No
Michigan	Yes	No	No Response ¹⁸	No	No	No
Minnesota	Yes ¹⁹	No	Depends	Depends	No	No
Mississippi	Yes	No	No	No	No	No
Missouri	Yes	No	Yes	Yes	Yes	Yes
Nebraska	Yes	No	Yes	No	No	No ²⁰
Nevada	Yes	No	No	Yes	No	No
New Jersey	Yes	No	Yes	No	No	No
New Mexico	Yes	No	No	Yes	Yes	No
New York	Yes	No	Yes ²¹	No	No	No
North Carolina	Yes	No	Yes	No Response ²²	No	No
North Dakota	Yes	No	Yes	No	Yes	Yes
Pennsylvania	Yes	No	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	Yes ²³	Yes ²⁴	Yes
South Dakota	Yes	No	Yes	Yes	Yes	No
Tennessee	Yes ²⁵	No	No ²⁶	No	No	No
Texas	No ²⁷	No	No	No	No	No ²⁸
Utah	Yes	No	No	No	No	No
Vermont	Yes	No ²⁹	No ³⁰	No ³¹	No ³²	No ³³

¹⁸ MI: See MCL 205.52b and 205.95a, RAB 1999-1 and RAB 2015-22.

¹⁹ MN: Sales person must work on company behalf at least 4 days in a 12 month period.

²⁰ NE: If the corporation utilizes a telemarketing service located in Nebraska to solicit sales through an 800 number, then nexus is established.

²¹ NY: See Regulation Section 526.10(a)(4)(i)(e).

²² NC: See G.S. 105-164.8(b)(3).

²³ RI: The regular or systematic solicitation of sales of tangible personal property by means of public conveyance.

²⁴ RI: *Id.*

²⁵ TN: The presence of in-state salespersons creates nexus.

²⁶ TN: Activities in connection with the in-state post office box may create nexus.

²⁷ TX: The reimbursements to a salesperson do not create nexus; however, having a salesperson in this state creates nexus.

²⁸ TX: Answer assumes that the call center handling the 1-800 calls is not located in Texas.

²⁹ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

³⁰ VT: *Id.*

³¹ VT: *Id.*

³² VT: *Id.*

³³ VT: *Id.*

State ¹	Reimburse- ments for in-home office ²	Maintains bank account ³	Maintains a P.O. box ⁴	Local telephone books ⁵	Local phone numbers ⁶	800 phone numbers ⁷
Virginia	Yes ³⁴	No	No	No	No	No ³⁵
Washington	Yes ³⁶	No	No	No	No	No
West Virginia	Yes	No	No	No	No	No
Wisconsin	Yes	No	No	No	No	No
Wyoming ³⁷	Yes ³⁸	No	No	No ³⁹	No	No ⁴⁰

³⁴ VA: The fact that the company has in-state salespersons is sufficient, regardless of whether it provides reimbursement for an in-home office.

³⁵ VA: Advertising in newspapers or other periodicals published and printed in Virginia, on billboards or posters in Virginia, or through materials distributed in Virginia by means other than U.S. mail would confer nexus.

³⁶ WA: The reimbursement in itself would not create nexus; however, having an employee here does.

³⁷ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

³⁸ WY: If the home office is for a sales person(s) performing services and/or sales in this state, nexus is created.

³⁹ WY: If the telephone listing is only a contact listing and not an advertisement, nexus is not created.

⁴⁰ WY: Advertising alone does not establish nexus.

Nexus-Creating Activities: Sales and Use Tax — Remote Sales

State ¹	Employees visit ²	Agents sell property ³	Install or deliver property ⁴	Provide customer assistance ⁵	Deliver merchandise ⁶	Deliver in returnable containers ⁷	Third-party distributor ⁸	In-state phones or kiosks ⁹
Alabama	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes ¹⁰
Arizona	Yes ¹¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California	Yes ¹²	Yes	Yes ¹³	Yes ¹⁴	Yes	No ¹⁵	No ¹⁶	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Connecticut	No Response ¹⁷	Yes	Yes	No Response ¹⁸	No Response ¹⁹	No Response ²⁰	No Response ²¹	No Response ²²
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida ²³	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit your state four or more times during the year.

³ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in the state.

⁴ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and authorizes an employee or third party (e.g., independent contractor, affiliated company, or other representative) to install, deliver, service, or repair merchandise in your state.

⁵ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and uses an employee or third party (e.g., independent contractor, affiliated company, or other representative) to investigate, handle, or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in your state.

⁶ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in your state in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.

⁷ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in your state in returnable containers.

⁸ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its products for distribution to a third-party distributor located in the state that performs functions such as labeling, packaging, and shipping.

⁹ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone or Internet kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.

¹⁰ AL: Kiosk is physically located in state.

¹¹ AZ: Answer assumes the employee is visiting the state for a business-related purpose.

¹² CA: Yes, if the employee is engaged in activity significantly associated with the taxpayer's ability to establish or maintain a market in the state for the sales.

¹³ CA: Delivery by a common carrier and repair or warranty service by in-state representatives do not create nexus, but delivery or installation by in-state rep and repair by in-state rep or independent contractor with substantially similar ownership as out-of-state corporation does create nexus.

¹⁴ CA: Yes, if the activity would promote sales and is not associated with repair or warranty service.

¹⁵ CA: This assumes that the delivery is not done by company-owned vehicles or by means other than common carrier.

¹⁶ CA: This assumes in-state distributor does not act as a distribution center by storing the retailer's products and that it does not act as a representative for the purpose of selling or delivering the property.

¹⁷ CT: DRS has no published position.

¹⁸ CT: *Id.*

¹⁹ CT: *Id.*

²⁰ CT: *Id.*

²¹ CT: *Id.*

²² CT: *Id.*

²³ FL: Please note that Nexus is generally considered on a case-by-case basis.

State ¹	Employees visit ²	Agents sell property ³	Install or deliver property ⁴	Provide customer assistance ⁵	Deliver merchandise ⁶	Deliver in returnable containers ⁷	Third-party distributor ⁸	In-state phones or kiosks ⁹
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii ²⁴	Yes	Yes	Yes	Yes	Yes	Yes ²⁵	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	No Response ²⁶	No Response ²⁷	No Response ²⁸
Illinois ²⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No ³⁰	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Maine	Yes ³¹	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes	Yes	No ³²	Yes	Yes
Massachusetts	No	Yes	Depends	Yes	Depends	No	Yes	Depends
Michigan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	Yes	No Response ³³	No Response ³⁴	No Response ³⁵	No Response ³⁶	No Response ³⁷	No Response ³⁸	No Response ³⁹
Mississippi	Yes ⁴⁰	Yes	Yes	Yes	No	No	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes	No	Yes ⁴¹	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	No Response ⁴²	Yes	Yes	Yes	Depends ⁴³	Depends ⁴⁴	No Response ⁴⁵	Yes

²⁴ HI: All activities that were marked “Yes” may be subject to the State of Hawaii’s General Excise/Use Tax.

²⁵ HI: Merchandise delivered to customers in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.

²⁶ ID: The Tax Commission has made no ruling on this fact situation.

²⁷ ID: *Id.*

²⁸ ID: *Id.*

²⁹ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

³⁰ KY: Depends upon the facts and circumstances of the activities in the state.

³¹ ME: Could be no if visits are limited to certain protected activities.

³² **MD: Assuming the product is delivered by common carrier or US mail.**

³³ MN: Will create nexus if more than 3 days in a 12 month period is spent doing business in the state for the corporation.

³⁴ MN: *Id.*

³⁵ MN: *Id.*

³⁶ MN: *Id.*

³⁷ MN: *Id.*

³⁸ MN: *Id.*

³⁹ MN: *Id.*

⁴⁰ **MS: The corporation creates nexus if the employee visiting Mississippi is servicing customers or soliciting sales.**

⁴¹ NJ: Presumes that the out-of-State corporation maintains ownership of the tangible personal property when the services are performed.

⁴² NY: See Regulation Section 526.10 and TSB-A-02(49)S.

⁴³ NY: Depends whether in state delivery constitutes regular or systematic delivery in accordance with Tax Law Section 1101(b)(8)(D) and Regulations Section 526.10(a)(5).

⁴⁴ NY: *Id.*

⁴⁵ NY: If this is a fulfillment service only, answer would be “no.”

State ¹	Employees visit ²	Agents sell property ³	Install or deliver property ⁴	Provide customer assistance ⁵	Deliver merchandise ⁶	Deliver in returnable containers ⁷	Third-party distributor ⁸	In-state phones or kiosks ⁹
North Carolina	Yes	Yes	Yes	Yes	Yes	No Response ⁴⁶	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes ⁴⁷	Yes
South Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes	Yes	Yes	No ⁴⁸	No ⁴⁹	Yes
Texas	Yes	Yes	Yes	Yes	Yes	No ⁵⁰	No ⁵¹	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont	No ⁵²	No ⁵³	Yes	Yes	No ⁵⁴	No ⁵⁵	No ⁵⁶	Yes
Virginia	No ⁵⁷	Yes	Yes ⁵⁸	No ⁵⁹	Yes ⁶⁰	No	No ⁶¹	No
Washington	Yes	Yes	Yes	Yes	Yes ⁶²	No	Yes ⁶³	Yes ⁶⁴
West Virginia	Yes	Yes ⁶⁵	Yes ⁶⁶	Yes	Yes	Yes ⁶⁷	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes	Yes	Yes	Yes ⁶⁸	Yes
Wyoming ⁶⁹	Yes	Yes	Yes	Yes	Yes	No ⁷⁰	No	Yes ⁷¹

⁴⁶ NC: If there are any deliveries of items in returnable containers made on the vendor's own trucks in this State, then Yes. The fact that a returnable container is used is immaterial. If all deliveries of items in a returnable container are made solely and exclusively via common carriers or U.S. Postal Service, then No.

⁴⁷ RI: If third-party distributor is located in Rhode Island, this would create nexus.

⁴⁸ TN: Answer assumes that delivery is by common carrier.

⁴⁹ TN: Answer assumes no inventory is maintained in Tennessee.

⁵⁰ TX: No, assumes that delivery is made by third party or common carrier. Delivery made in company-owned or personal vehicle will create nexus as indicated in question [regarding delivery of merchandise to customers in state in company-owned vehicles or by means other than common carrier or U.S. Postal Service].

⁵¹ TX: No, assumes that items enter Texas from out of state and are not stored in Texas other than as needed during course of interstate transit. Use of a storage facility in this state causes a person to be engaged in business in Texas.

⁵² VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁵³ VT: *Id.*

⁵⁴ VT: *Id.*

⁵⁵ VT: *Id.*

⁵⁶ VT: *Id.*

⁵⁷ VA: Unless the employee is soliciting sales in Virginia during these visits. The visit, by itself, is not sufficient to confer nexus.

⁵⁸ VA: See P.D. 97-266, 99-94, and 01-115. **Yes if the deliveries number is greater than 12 times per year.**

⁵⁹ VA: See P.D. 04-173, 99-81, and 04-38.

⁶⁰ VA: See Va. Code Ann. § 58.1-612(C)(4).

⁶¹ VA: Unless an agency relationship exists between the retailer and the distributor or the distributor and retailer are part of a commonly controlled group. See PD 13-166.

⁶² WA: Regular delivery in vehicles of the seller can establish nexus.

⁶³ WA: Establishes local stock of goods and therefore nexus.

⁶⁴ WA: Kiosks would be "property in this state" which is sufficient to create nexus.

⁶⁵ WV: See West Virginia Legislative Rule 110CSR15-60.1.

⁶⁶ WV: *Id.*

⁶⁷ WV: See West Virginia Legislative Rule 110CSR15-32.3.1.

⁶⁸ WI: Exception for certain activities by foreign publishers. See sec. Tax 11.97(5), Wis. Adm. Code (August 2014 Register), at http://docs.legis.wisconsin.gov/code/admin_code/tax/11.

⁶⁹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery to our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁷⁰ WY: Regardless to returnable containers, deliveries made in this state by common carriers do not create nexus; however, deliveries in a company vehicle do create nexus.

⁷¹ WY: Assets of a company located in Wyoming create a physical presence/nexus.

Nexus-Creating Activities: Sales and Use Tax — Temporary or Sporadic Presence

State ¹	Attend trade show ²	Make sales at trade show ³	One to five days at trade show ⁴	Sales while in state temporarily ⁵	Employees meet with suppliers ⁶	Hold one-day seminars ⁷	Seminars and employee visits ⁸	Conducts disaster relief operations ⁹
Alabama ¹⁰	No Response ¹¹	Yes	No Response ¹²	Yes	Yes	Yes	Yes	No Response¹³
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	No	Yes	No	Yes	Yes	No	Yes	Yes
California	No ¹⁴	No ¹⁵	No ¹⁶	Yes	No	Yes	Yes	No
Colorado	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Connecticut	No Response ¹⁷	No Response ¹⁸	No Response ¹⁹	No Response ²⁰	No Response ²¹	No Response ²²	No Response ²³	No Response²⁴
District of Columbia	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes²⁵

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes no sales and takes no orders at the trade show.

³ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes sales and/or accepts orders at the trade show.

⁴ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and limits trade show activities in the state to one to five days annually.

⁵ The corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and sells tangible personal property while temporarily located in your state for up to three days.

⁶ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has employees or representatives occasionally enter the state to meet with in-state suppliers of goods or services.

⁷ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to state residents and holds two or more one-day seminars in the state.

⁸ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to state residents, holds two or more one-day seminars in the state, and has its employees visit the state five times during the year.

⁹ **The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and enters your state solely for purposes of conducting disaster relief operations.**

¹⁰ AL: There is not an established threshold for a minimum number of contacts that can be made by an out-of-state seller before the seller would have sufficient nexus to require the seller to collect tax. The determination is made on a case-by-case basis. However, the taxpayer could have economic nexus in this state if sales are \$250,000.00 or more per year.

¹¹ AL: Case by case.

¹² AL: *Id.*

¹³ **AL: Case by case. If the taxpayer is selling tangible personal property, they would have a sales tax obligation. If only conducting relief operations, not sales, then no sales tax obligation would be due.**

¹⁴ CA: Retailers at trade shows must collect and remit tax on sales they make on orders taken at trade shows. Retailers with trade show activities of 15 days or less in any 12-month period and no more than \$100,000 in net income in the prior calendar year from trade show activities are not engaged in business in this state.

¹⁵ CA: *Id.*

¹⁶ CA: *Id.*

¹⁷ CT: See Conn. Gen. Stat. §12-407(a)(15)(D).

¹⁸ CT: DRS has no published position.

¹⁹ CT: *Id.*

²⁰ CT: *Id.*

²¹ CT: *Id.*

²² CT: *Id.*

²³ CT: *Id.*

²⁴ **CT: *Id.***

²⁵ **DC: If taxable sales are made.**

State ¹	Attend trade show ²	Make sales at trade show ³	One to five days at trade show ⁴	Sales while in state temporarily ⁵	Employees meet with suppliers ⁶	Hold one-day seminars ⁷	Seminars and employee visits ⁸	Conducts disaster relief operations ⁹
Florida ²⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Depends ²⁷	Depends ²⁸	Depends ²⁹	Yes	Yes	Yes	Yes	No ³⁰
Hawaii	Yes ³¹	Yes ³²	Yes ³³	Yes ³⁴	Yes	Yes ³⁵	Yes ³⁶	Yes
Idaho	No	Yes	No Response ³⁷	Yes	No Response ³⁸	No Response ³⁹	Yes	Yes
Illinois ⁴⁰	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	Yes	Yes	No	No	No	No
Iowa	Yes ⁴¹	Yes ⁴²	Yes ⁴³	Yes ⁴⁴	Yes ⁴⁵	Yes	Yes	No ⁴⁶
Kansas	No	Yes	No	Yes	Yes	Yes	Yes	No Response
Kentucky	No	Yes	No ⁴⁷	Yes	No ⁴⁸	Yes ⁴⁹	Yes ⁵⁰	No ⁵¹
Louisiana	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Maine	No	Yes	Yes ⁵²	Yes	Yes	Yes	Yes ⁵³	Yes ⁵⁴

²⁶ FL: Nexus is considered on a case-by-case basis.

²⁷ GA: Soliciting business generally constitutes nexus, but there is an exception if the only activity is “[t]o engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer’s sole physical presence in this state and the dealer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than \$100,000.00 of net income from those activities in this state during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for the collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.” See O.C.G.A. 48-8-2(8)(I) (iii).

²⁸ GA: *Id.*

²⁹ GA: *Id.*

³⁰ GA: **See O.C.G.A. 48-2-100 - no nexus if certain conditions are satisfied.**

³¹ HI: May make the seller subject to the State of Hawaii’s General Excise / Use Tax, depending on facts and circumstances.

³² HI: *Id.*

³³ HI: *Id.*

³⁴ HI: *Id.*

³⁵ HI: *Id.*

³⁶ HI: *Id.*

³⁷ ID: There is not enough information to answer this question. It would depend on the circumstances.

³⁸ ID: This depends on the nature and frequency of the visits. There is no specific answer to this question.

³⁹ ID: *Id.*

⁴⁰ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

⁴¹ IA: Nexus occurs if the company regularly attends the trade show, even if the trade show is only annually.

⁴² IA: *Id.*

⁴³ IA: *Id.*

⁴⁴ IA: If regularly sells at temporary locations, then nexus has occurred and a temporary sales tax permit is required.

⁴⁵ IA: Nexus occurs if the persons enter the state on a regular basis. Regular may be once per year.

⁴⁶ IA: **No obligation to collect or remit tax under Iowa Code section 29C.24(3)(a)(2).**

⁴⁷ KY: Depends upon the facts and circumstances of the activities in the state.

⁴⁸ KY: No, as long as reps or employees entering the state are not sales agents soliciting sales, but their only contact is with supply vendors from whom they purchase materials. Also, the frequency of these visits could result in a different response.

⁴⁹ KY: The presumption is that seminars and visits are sales related.

⁵⁰ KY: *Id.*

⁵¹ KY: **Depends upon what the disaster relief operations are. Sales activity could trigger nexus.**

⁵² ME: See responses to previous questions regarding trade shows. The number of days is irrelevant.

⁵³ ME: Answer could change if visits are limited to certain protected activities.

⁵⁴ ME: **Probably; may depend on the nature and duration of the in-state presence; if nexus is not established and registration as a seller is not required by 36 MRSA Section 1754-B, property brought into Maine and used to conduct disaster relief operations may be exempt from use tax under Section 1760, subsection 45(A-4).**

State ¹	Attend trade show ²	Make sales at trade show ³	One to five days at trade show ⁴	Sales while in state temporarily ⁵	Employees meet with suppliers ⁶	Hold one-day seminars ⁷	Seminars and employee visits ⁸	Conducts disaster relief operations ⁹
Maryland	No	Yes	Yes	Yes ⁵⁵	Yes	Yes	Yes ⁵⁶	No
Massachusetts	No	Depends	Depends	Depends	No	No	Yes	Depends
Michigan	No ⁵⁷	Yes	No ⁵⁸	Yes	No	Yes	Yes	No
Minnesota ⁵⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Mississippi	No	Yes	No ⁶⁰	Yes	No	No ⁶¹	No ⁶²	No ⁶³
Missouri	No	Yes	No	Yes	Yes	Yes	Yes	No
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No Response ⁶⁴
Nevada	Yes ⁶⁵	Yes ⁶⁶	Yes ⁶⁷	Yes ⁶⁸	Yes ⁶⁹	Yes ⁷⁰	Yes ⁷¹	Yes
New Jersey	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York ⁷²	No Response	No Response	No Response	Yes	No Response	No Response	No Response	No Response
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes ⁷³	Yes	Yes ⁷⁴	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes ⁷⁵	Yes	Yes	Yes	No	Yes	Yes	Yes

⁵⁵ MD: Vendor may be able to get a temporary sales and use tax license.

⁵⁶ MD: Yes, if employees are soliciting sales, offering services, making deliveries.

⁵⁷ MI: Attends/participates for less than 10 days cumulatively on an annual basis.

⁵⁸ MI: If no sales are made or orders taken.

⁵⁹ MN: Will create nexus if they spend more than 3 days total within a 12 month period in the state for any combination of activities. Any sales made in Minnesota (product given to buyer) will be subject to MN tax whether or not the corporation has created nexus.

⁶⁰ MS: Attending trade shows does not create nexus unless they makes sales or accept orders at the trade show.

⁶¹ MS: No, as long as there is no solicitation of sales or servicing of customers at the seminars or by the employees who visit the state.

⁶² MS: Unless employees are servicing customers. [This answer is] no, as long as there is no solicitation of sales or servicing of customers at the seminars or by the employees who visit the state.

⁶³ MS: Miss. Code Ann. Sections §27-113-1 to §27-113-9 allows for the companies and employees exemption from registering for tax immediately before a disaster, during and until the disaster is considered over. Businesses and employees must pay any excise or sales/use tax on the purchases of items used/consumed while in the state.

⁶⁴ NE: Nebraska cannot determine how disaster relief operation is defined from this question.

⁶⁵ NV: Yes, if facts indicate that attendance at the trade show is for the purpose of creating and/or maintaining a market in Nevada. The answer is yes if they are in the state more than 2 days annually.

⁶⁶ NV: *Id.*

⁶⁷ NV: *Id.*

⁶⁸ NV: Yes, sales at "one-time events" are monitored by the Department of Taxation through the promoters of events who are required to provide the Department with a list of participants prior to the event. The promoter is also responsible for informing the participants of their Nevada sales tax liability for sales made at the event and for reporting and payment of the taxes collected at the event.

⁶⁹ NV: The answer is "yes" provided the facts indicate that the presence in Nevada is for the purpose of creating and/or maintaining a market or customer base.

⁷⁰ NV: *Id.*

⁷¹ NV: *Id.*

⁷² NY: Determination in these situations is facts driven; see generally TSB-A-02(49)S.

⁷³ PA: Participates in trade show.

⁷⁴ PA: *Id.*

⁷⁵ RI: If a person only attends a trade show as a customer, and does not participate (ex: does not set up a booth) and does not solicit orders, this would not be considered nexus in Rhode Island.

State ¹	Attend trade show ²	Make sales at trade show ³	One to five days at trade show ⁴	Sales while in state temporarily ⁵	Employees meet with suppliers ⁶	Hold one-day seminars ⁷	Seminars and employee visits ⁸	Conducts disaster relief operations ⁹
South Dakota	No ⁷⁶	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	Yes ⁷⁷	Yes ⁷⁸	No	No ⁷⁹	Yes ⁸⁰	Yes
Texas	Yes	Yes	Yes	Yes	No	Yes	Yes	No ⁸¹
Utah	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vermont	No ⁸²	No Response	No ⁸³	No Response	No ⁸⁴	No ⁸⁵	No ⁸⁶	No Response
Virginia	No ⁸⁷	No ⁸⁸	No ⁸⁹	No ⁹⁰	No	No	Depends ⁹¹	No
Washington	Depends ⁹²	Yes	Depends ⁹³	Yes	Yes	Yes	Yes	Yes
West Virginia	No	Yes	No	Yes	No	Yes	Yes	No
Wisconsin	Yes ⁹⁴	Yes ⁹⁵	Yes ⁹⁶	Yes ⁹⁷	Yes ⁹⁸	Yes ⁹⁹	Yes ¹⁰⁰	Yes ¹⁰¹
Wyoming ¹⁰²	Yes	Yes	Yes	Yes	No	No Response ¹⁰³	Yes ¹⁰⁴	No Response ¹⁰⁵

⁷⁶ SD: Attending a trade show may create nexus in this State. However, because there is no tax due, there is no licensing enforced at this time.

⁷⁷ TN: Answer given assumes that the activities of the business at the trade show include making sales.

⁷⁸ TN: Answer given assumes sales made are not de minimis.

⁷⁹ TN: Answer assumes that no sales are made at the seminars.

⁸⁰ TN: Answer assumes that sales are made at the seminars or that the employees solicit sales or visit customers.

⁸¹ **TX: A seller is not engaged in business in this state if the seller is an out-of-state business entity whose physical presence in this state is solely from the entity's performance of disaster or emergency-related work, as defined in Rule 3.286(a)(3), during a disaster response period, as defined in Rule 3.286(a)(4)(I)(ii). An out-of-state business entity that remains in this state after a disaster response period has ended is engaged in business in this state if the entity conducts any activities described in Rule 3.286(a)(4)(A) - (I).**

⁸² VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁸³ VT: *Id.*

⁸⁴ VT: *Id.*

⁸⁵ VT: *Id.*

⁸⁶ VT: *Id.*

⁸⁷ VA: Va. Code Ann. §58.1-609.10(2) exempts occasional sales, which may apply to this situation, depending on the facts and circumstances (see P.D. 96-27).

⁸⁸ VA: *Id.*

⁸⁹ VA: *Id.*

⁹⁰ VA: *Id.*

⁹¹ VA: Response depends upon whether the employee visits the state to solicit sales or for another reason.

⁹² **WA: As of July 1, 2016, there is an exception to attend one qualifying trade convention (not open to the public) per year, where no retail sales are made.**

⁹³ WA: *Id.*

⁹⁴ WI: Merely attending a trade show as a visitor would not create nexus. However, if sellers only in-state activity is displaying merchandise at local trade shows (no orders being solicited) which results in mail order sales, nexus is created. See Temporary Events Publication 228 at www.revenue.wi.gov/pubs/pb228.pdf. Nexus would remain until the conclusion of the seller's tax year.

⁹⁵ WI: Nexus would remain until the conclusion of the seller's tax year.

⁹⁶ WI: Merely attending a trade show as a visitor would not create nexus. However, if sellers only in-state activity is displaying merchandise at local trade shows (no orders being solicited) which results in mail order sales, nexus is created. See Temporary Events Publication 228 at www.revenue.wi.gov/pubs/pb228.pdf. Nexus would remain until the conclusion of the seller's tax year.

⁹⁷ WI: Nexus would remain until the conclusion of the seller's tax year.

⁹⁸ WI: *Id.*

⁹⁹ WI: *Id.*

¹⁰⁰ WI: *Id.*

¹⁰¹ **WI: See Publication 411.**

¹⁰² WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

¹⁰³ WY: Remote sales alone do not create nexus; however, depending on the nature of the seminar, nexus could be valid as employees, engaged in activities designed to impact sales or services in our state, creates nexus. Without information surrounding the circumstances of a "seminar," we are unable to provide an answer.

¹⁰⁴ WY: *Id.*

¹⁰⁵ **WY: Remote sales alone does not create nexus; however depending on the nature of their "disaster relief operations," nexus could be established as employees engaged in activities designed to impact sales or services in our state creates nexus. Without knowing the scope of their operations we are unable to provide an answer.**

Nexus-Creating Activities: Sales and Use Tax — Activities of Unrelated Parties

State ¹	Agent warranty services ²	Hires unaffiliated printer ³	Hires unrelated call center ⁴	Advertises in local media ⁵	Produces infomercial ⁶	Hires collection agency ⁷	Drop shipments to customers ⁸	Ships from unrelated distribution center ⁹
Alabama	Yes	Yes ¹⁰	No ¹¹	No	No	No	No ¹²	Yes ¹³
Arizona	Yes	Yes	Yes	No ¹⁴	No ¹⁵	No	Yes	Yes
Arkansas	Yes	Yes	Yes	No	No	No	Yes ¹⁶	Yes
California	No ¹⁷	Yes	Yes	No ¹⁸	No	No	No ¹⁹	Yes
Colorado	Yes	No	Yes	No	Depends	No	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires independent contractors to perform warranty or repair services on tangible personal property located in your state.

³ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires an unaffiliated printer in the state and stores raw materials or finished goods at the in-state printer's plant.

⁴ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and hires an unrelated call center or fulfillment center located in your state to process telephone and electronic orders that primarily derive from out-of-state customers.

⁵ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and enters into an advertising contract with a cable station, radio station, print publication, or electronic publication that is located in your state.

⁶ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and produces an "infomercial" that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to in-state consumers who made purchases using the phone number or website address displayed on the "infomercial."

⁷ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and collects delinquent accounts using a collection agency in your state or hires attorneys, or other third parties, to file collection suits in courts in your state.

⁸ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and uses a company in your state to drop-ship merchandise to customers.

⁹ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and stores and ships items from an unrelated distribution center located in your state.

¹⁰ AL: Maintains inventory of supplies in ALA.

¹¹ AL: See Section 40-23-68(a)(5), Code of Alabama 1975, amended.

¹² AL: If the taxpayer has inventory stored in this state it would create nexus.

¹³ AL: Maintains inventory in ALA.

¹⁴ AZ: Answer assumes delivery of purchases is made by U.S. mail or common carrier and not by the corporation or its employees or agents. Substantial nexus may be created if the listed activity is significantly associated with the corporation's ability to establish and maintain a business market in Arizona.

¹⁵ AZ: *Id.*

¹⁶ AR: If aggregate sales become more than \$10,000 annually.

¹⁷ CA: Warranty and repair services by in-state rep or independent contractor with substantially similar ownership as out-of-state corporation does create nexus (see Reg. 1684).

¹⁸ CA: This assumes that the in-state advertiser is not engaged in solicitation in state and paid consideration based on completed sales. (See Reg. 1684, subd. (c)(3) - (4)).

¹⁹ CA: The in-state drop shipper would be deemed the retailer and be liable for the tax. (See Reg. 1706.)

State ¹	Agent warranty services ²	Hires unaffiliated printer ³	Hires unrelated call center ⁴	Advertises in local media ⁵	Produces infomercial ⁶	Hires collection agency ⁷	Drop shipments to customers ⁸	Ships from unrelated distribution center ⁹
Connecticut	No Response ²⁰	No Response ²¹	No Response ²²	No Response ²³	No Response ²⁴	No Response ²⁵	No Response ²⁶	No Response ²⁷
District of Columbia	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Florida ²⁸	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Depends ²⁹	Yes	No	Yes	Yes	Depends ³⁰	Yes ³¹
Hawaii	Yes	Yes ³²	No ³³	No	Yes ³⁴	Yes	No	Yes
Idaho	Yes ³⁵	No	Yes ³⁶	No	Yes	No	No	Yes
Illinois ³⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No	No	No	Yes	Yes
Kentucky	Yes	Yes ³⁸	Yes	No ³⁹	No	No ⁴⁰	No ⁴¹	Yes
Louisiana	Yes	Yes ⁴²	Yes ⁴³	No	Yes	No	Yes	Yes
Maine	Yes	Yes ⁴⁴	Yes ⁴⁵	No	Yes ⁴⁶	No	Yes ⁴⁷	Yes ⁴⁸
Maryland	Yes	Yes	Yes	No	Yes	No	Yes	Yes
Massachusetts	Depends	Depends	Depends	Depends	No	Yes	Depends	Depends
Michigan	Yes	Yes	Yes	No	Yes	Yes	No Response ⁴⁹	Yes

²⁰ CT: See Conn. Gen. Stat. § 12-407(a)(15)(A)(ix).

²¹ CT: See Conn. Gen. Stat. § 12-407(a)(15)(B).

²² CT: See Conn. Gen. Stat. § 12-407(a)(15)(C).

²³ CT: DRS has no published position.

²⁴ CT: *Id.*

²⁵ CT: *Id.*

²⁶ CT: See Conn. Gen. Stat. § 12-407(a)(15)(C).

²⁷ CT: DRS has no published position.

²⁸ FL: Nexus is considered on a case-by-case basis.

²⁹ GA: See exceptions in 48-8-2(8)(N).

³⁰ GA: Unsure of the relationship of the drop shipper to the seller.

³¹ GA: Owning inventory in the state would constitute nexus.

³² HI: May make the seller subject to the State of Hawaii's General Excise / Use Tax, depending on facts and circumstances.

³³ HI: Unless the fulfillment center has the inventory of the taxpayer.

³⁴ HI: May make the seller subject to the State of Hawaii's General Excise / Use Tax, depending on facts and circumstances.

³⁵ ID: The Idaho State Tax Commission has not issued any rulings on independent contractors performing warranty repairs within the state. The issue is unsettled.

³⁶ ID: This is also an unsettled issue.

³⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

³⁸ KY: Assumes raw materials and finished goods are not printing supplies.

³⁹ KY: Depends upon the facts and circumstances of the activities in the state.

⁴⁰ KY: No, on the basis of not utilizing a rep or agent to solicit sales.

⁴¹ KY: *Id.*

⁴² LA: Answer assumes that the "goods" stored are product for sale and not advertising materials.

⁴³ LA: Assumes that the center is fulfilling orders. If mere placement of orders, the answer is no.

⁴⁴ ME: Possibly; see 36 MRSA section 1754-B, subsection 1-A, paragraph (B).

⁴⁵ ME: *Id.*

⁴⁶ ME: *Id.*

⁴⁷ ME: *Id.*

⁴⁸ ME: *Id.*

⁴⁹ MI: This would be a fact-specific situation, and depend on the relationship of the three parties.

State ¹	Agent warranty services ²	Hires unaffiliated printer ³	Hires unrelated call center ⁴	Advertises in local media ⁵	Produces infomercial ⁶	Hires collection agency ⁷	Drop shipments to customers ⁸	Ships from unrelated distribution center ⁹
Minnesota	No Response ⁵⁰	Yes	Yes	No	No Response ⁵¹	Yes	Yes	Yes
Mississippi	Yes	Yes	No	No	No	No	No	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Nevada	Yes ⁵²	Yes ⁵³	Yes ⁵⁴	No	Yes ⁵⁵	Yes ⁵⁶	No	Yes
New Jersey	Yes ⁵⁷	Yes ⁵⁸	Yes ⁵⁹	No ⁶⁰	Yes ⁶¹	No ⁶²	No ⁶³	Yes
New Mexico	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	No	No	No Response ⁶⁴	No	No	No
North Carolina	Yes	Yes	Yes	No	Yes	No	No ⁶⁵	Yes
North Dakota	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Pennsylvania	Yes	No	Yes	Depends ⁷⁰	Yes	No	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
South Dakota	Yes	Yes	Yes	No	Yes ⁷⁵	Yes ⁷⁶	No ⁷⁷	Yes
Tennessee	Yes ⁷⁸	No ⁷⁹	Yes ⁸⁰	No	No	No	Yes	No
Texas	Yes	Yes	Yes	No	Yes	No	No	Yes
Utah	Yes	No	No	No	No	No	No	Yes

⁵⁰ MN: Will create nexus if they spend more than 3 days total within a 12-month period in the state for any combination of activities.

⁵¹ MN: Will create nexus if sales more than \$10,000 per year.

⁵² NV: The answer is "yes" if presence in Nevada is related to creating and/or maintaining a market in Nevada and if the corporation benefits from services paid for by tax dollars.

⁵³ NV: *Id.*

⁵⁴ NV: *Id.*

⁵⁵ NV: *Id.*

⁵⁶ NV: *Id.*

⁵⁷ NJ: Answer assumes none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.

⁵⁸ NJ: *Id.*

⁵⁹ NJ: *Id.*

⁶⁰ NJ: *Id.*

⁶¹ NJ: Answer assumes none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met. Public Law 2014, c.13 amended N.J.S.A. 54:32B-2(i)(1)(C) to modify the definition of seller.

⁶² NJ: Answer assumes none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.

⁶³ NJ: *Id.*

⁶⁴ NY: May trigger a rebuttable presumption of nexus. See details at TSB-M-08(3)S, New Presumption Applicable to Definition of Sales Tax Vendor, TSB-M-08(3.1)S, Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.

⁶⁵ NC: **Provided the merchandise is not owned by the out-of-state corporation.**

⁷⁰ PA: Depends on extent and nature of advertising.

⁷⁵ SD: The state of South Dakota would need to look at this on a case by case basis. We would want to look at all factors involved.

⁷⁶ SD: *Id.*

⁷⁷ SD: *Id.*

⁷⁸ TN: Answer given assumes that the repairs are actually performed in Tennessee.

⁷⁹ TN: See Tenn. Code Ann. §67-6-329(a)(6).

⁸⁰ TN: Answer given assumes that there is an agency relationship with the call center or fulfillment center.

State ¹	Agent warranty services ²	Hires unaffiliated printer ³	Hires unrelated call center ⁴	Advertises in local media ⁵	Produces infomercial ⁶	Hires collection agency ⁷	Drop shipments to customers ⁸	Ships from unrelated distribution center ⁹
Vermont	Yes	Yes	No ⁸¹	No Response	No Response	No ⁸²	No ⁸³	No ⁸⁴
Virginia	No	No	No	No ⁸⁵	No	No	No	No ⁸⁶
Washington	Yes	Yes	Yes	No	No	No	No	Yes
West Virginia	Yes	No ⁸⁷	No	No	Yes	Yes	Yes	No
Wisconsin	Yes ⁸⁸	No ⁸⁹	Yes ⁹⁰	No	No	Yes	Yes ⁹¹	Yes
Wyoming ⁹²	Yes	Yes	Yes ⁹³	No	No ⁹⁴	No	No	No Response ⁹⁵

⁸¹ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁸² VT: *Id.*

⁸³ VT: *Id.*

⁸⁴ VT: *Id.*

⁸⁵ VA: Advertising in newspapers or other periodicals published and printed in Virginia, on billboards or posters in Virginia, or through materials distributed in Virginia by means other than the U.S. mail would confer nexus.

⁸⁶ VA: Legislation enacted in 2012 confers nexus if a commonly controlled person maintains a distribution center in Virginia that facilitates the delivery of TPP sold by the out-of-state dealer.

⁸⁷ WV: See TAA 93-003.

⁸⁸ WI: Yes, if acting as an agent/representative of the corporation according to sec. 77.51(13g)(b), Wis. Stats. (2015-16).

⁸⁹ WI: Assumes 77.51(13h), Wis. Stats. (2015-16).

⁹⁰ WI: Yes, if acting as an agent/representative of the corporation according to sec. 77.51(13g)(b), Wis. Stats. (2015-16).

⁹¹ WI: Assumes that the company used to drop ship the merchandise is acting as the agent/representative of the corporation according to Sec. 77.51(13g)(b), Wis. Stats. (2015-16).

⁹² WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁹³ WY: If the fulfillment center located in our state houses the seller's inventory, nexus would be established.

⁹⁴ WY: Advertising alone is not a nexus creating activity.

⁹⁵ WY: Unable to respond as there must be some relationship between the parties, and that would bear to our answer.

Nexus-Creating Activities: Sales and Use Tax — Financial Activities

State ¹	Issues credit cards ²	Investment partnership ³	General partnership interest ⁴	Limited partnership interest ⁵	Managing LLC interest ⁶	Non-managing LLC interest ⁷
Alabama ⁸	No Response	No Response	No Response	No Response	No Response	No Response
Arizona	No ⁹	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	No	No	Yes	No
California	No	No ¹⁰	No ¹¹	No ¹²	No ¹³	No ¹⁴
Colorado	No	Yes	Yes	Depends	Yes	Depends
Connecticut ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	No	Yes	Yes	Yes	Yes ¹⁶	Yes ¹⁷
Florida ¹⁸	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No	Yes	Yes	No Response ¹⁹	Yes	No Response ²⁰
Illinois ²¹	No Response	No Response	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and issues credit cards to customers who reside in your state.

³ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an investment partnership or LLC that has operations in your state.

⁴ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns a general interest in a partnership that is doing business in your state.

⁵ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns a limited interest in a partnership that is doing business in your state.

⁶ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.

⁷ The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.

⁸ AL: See Code Section 40-23-190 entitled "Conditions for remote entity nexus."

⁹ AZ: Answer assumes delivery of purchases is made by U.S. mail or common carrier and not by the corporation or its employees or agents.

¹⁰ CA: We assume the in-state entity is not engaged in any type of selling activity on behalf of the out-of-state corporation.

¹¹ CA: *Id.*

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CA: *Id.*

¹⁵ CT: DRS has no published position.

¹⁶ DC: Too vague to make determination.

¹⁷ DC: *Id.*

¹⁸ FL: Nexus is considered on a case-by-case basis.

¹⁹ ID: The Tax Commission has made no rulings on this issue. The determination would depend on the facts and circumstances of a particular case.

²⁰ ID: *Id.*

²¹ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Issues credit cards ²	Investment partnership ³	General partnership interest ⁴	Limited partnership interest ⁵	Managing LLC interest ⁶	Non-managing LLC interest ⁷
Indiana	No	No	No	No	No	No
Iowa	No	Yes	Yes	Yes	Yes	Yes
Kansas ²²	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No ²³	No ²⁴	No ²⁵	No ²⁶	No ²⁷
Louisiana	No	No ²⁸	Yes ²⁹	No ³⁰	Yes ³¹	No ³²
Maine	No	Yes ³³	Yes ³⁴	Yes ³⁵	Yes ³⁶	Yes ³⁷
Maryland	No	Yes	Yes	Yes	Yes	Yes
Massachusetts	Yes	Depends	Yes	Depends	Yes	Depends
Michigan	No	No Response ³⁸	No Response ³⁹	No Response ⁴⁰	No Response ⁴¹	No Response ⁴²
Minnesota	No	No Response ⁴³	No Response ⁴⁴	No Response ⁴⁵	Yes	No Response ⁴⁶
Mississippi	No	No	Yes	Yes	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	No	No ⁴⁷	Yes	No ⁴⁸	Yes ⁴⁹	No ⁵⁰
Nevada	No	No ⁵¹	No ⁵²	No ⁵³	No ⁵⁴	No ⁵⁵

²² KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.

²³ KY: Depends on whether the partnership or LLC helps the retailer maintain a marketplace in Kentucky.

²⁴ KY: *Id.*

²⁵ KY: *Id.*

²⁶ KY: *Id.*

²⁷ KY: *Id.*

²⁸ LA: If the LLC/partnership is facilitating the sales operations or assisting the seller in establishing or maintaining a market in the state, the answer is yes.

²⁹ LA: *Id.*

³⁰ LA: *Id.*

³¹ LA: *Id.*

³² LA: *Id.*

³³ ME: Nexus established if partnership or LLC has physical presence in the state.

³⁴ ME: *Id.*

³⁵ ME: *Id.*

³⁶ ME: *Id.*

³⁷ ME: *Id.*

³⁸ MI: The specific facts of the situation would have to be assessed under MCL 205.52b and 205.95a, and RABs 1999-1 and 2015-22.

³⁹ MI: *Id.*

⁴⁰ MI: *Id.*

⁴¹ MI: *Id.*

⁴² MI: *Id.*

⁴³ MN: Affiliated LLC would need to advertise, promote or facilitate on the out-of-state corporation's behalf in order for the affiliated company to create nexus.

⁴⁴ MN: *Id.*

⁴⁵ MN: *Id.*

⁴⁶ MN: *Id.*

⁴⁷ NE: No if the out-of-state corporation owns an interest in an investment partnership or investment LLC.

⁴⁸ NE: Our answers assume that the business conducted by the partnership or LLC is unrelated to the business of the out-of-state corporation.

⁴⁹ NE: *Id.*

⁵⁰ NE: *Id.*

⁵¹ NV: The answer is "yes" if the presence in Nevada is related to creating and/or maintaining a market in Nevada and the corporation benefits from services paid for by tax dollars.

⁵² NV: *Id.*

⁵³ NV: *Id.*

⁵⁴ NV: *Id.*

⁵⁵ NV: *Id.*

State ¹	Issues credit cards ²	Investment partnership ³	General partnership interest ⁴	Limited partnership interest ⁵	Managing LLC interest ⁶	Non-managing LLC interest ⁷
New Jersey ⁵⁶	No	No	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York ⁵⁷	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	No	No	No	No	No	No
North Dakota	No	No	Yes	No	Yes	No
Pennsylvania	No	No	No	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes	Yes	Yes
Tennessee	No ⁵⁸	No	No	No	No	No
Texas	No	No Response ⁵⁹	No Response ⁶⁰	No Response ⁶¹	No Response ⁶²	No Response ⁶³
Utah	No	No	No	No	No	No
Vermont ⁶⁴	No	No	No	No	No	No
Virginia	No	No ⁶⁵	No ⁶⁶	No ⁶⁷	No ⁶⁸	No ⁶⁹
Washington	No	No	No	No	No	No
West Virginia	No ⁷⁰	Yes	Yes	No ⁷¹	Yes	Yes
Wisconsin	No	No	No	No	No	No
Wyoming ⁷²	No	No	No	No	No	No

⁵⁶ NJ: Answers assume none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.

⁵⁷ NY: See TSB-M-09(3)S, Definition of Sales Tax Vendor is Expanded to Include Out-of-State Services With Related Businesses in New York State.

⁵⁸ TN: Answer given assumes that the business does not have agents in Tennessee that solicit the credit card applications and/or facilitate use of the credit cards (i.e. helping fill out credit card applications or allowing the return of merchandise purchased with the credit cards to affiliated stores in Tennessee).

⁵⁹ TX: Texas Tax Code Section 151.107 provides that a “retailer engaged in business in this state” includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that “ownership” includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines “substantial” to mean a 50 percent ownership interest with the type of ownership (i.e., beneficial, combined voting power, etc.) determined by the type of entity.”

⁶⁰ TX: *Id.*

⁶¹ TX: *Id.*

⁶² TX: *Id.*

⁶³ TX: *Id.*

⁶⁴ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁶⁵ VA: **§ 58.1-612 C(7) may impute the physical presence of the affiliated Virginia entity to the out-of-state corporation.**

⁶⁶ VA: *Id.*

⁶⁷ VA: *Id.*

⁶⁸ VA: *Id.*

⁶⁹ VA: *Id.*

⁷⁰ WV: See *Tax Commissioner v. MBNA America Bank, N.A.* 220 W.Va. 163, 640 SE2d 226 (2006). No physical presence in WV.

⁷¹ WV: Mere ownership of a limited partnership interest in a partnership that conducts activity in the State is not “doing business” because the activity that is conducted is by the partnership, not by its limited partners who cannot participate in the management of the limited partnership. Thus, it is the partnership, not its limited partner, that is doing business in the State.

⁷² WY: Only those entities who meet our definition of a vendor are required to license with our office. (See W.S. 39-15-101(a)(xv) and W.S. 39-16-101(a)(x).)

Nexus-Creating Activities: Sales and Use Tax — Activities with Affiliates (Part 1 of 2)

State ¹	In-state affiliate sells property ²	In-state affiliate accepts returns ³	Affiliate operates retail store ⁴	Loyalty points program ⁵	Sells gift cards ⁶
Alabama ⁷	Yes	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes
California	No	Yes	No	Yes	Yes
Colorado	Yes	Yes	No Response ⁸	Yes	Yes
Connecticut ⁹	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida ¹⁰	No Response	No Response	No Response	No Response	No Response
Georgia	Yes ¹¹	Yes	Depends ¹²	Yes ¹³	Yes
Hawaii	Yes	Yes	Depends	Yes	No
Idaho	Yes ¹⁴	Yes ¹⁵	Yes ¹⁶	Yes	No
Illinois ¹⁷	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and the in-state affiliate sells similar merchandise and uses common trade names, trademarks, or logos.

³ The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and uses the in-state affiliate to accept returns, take orders, perform customer service, or distribute advertising materials on its behalf.

⁴ The corporation is affiliated with an entity that sells tangible personal property or services to customers in your state, and sells tangible personal property over the Internet or by catalog and has an affiliated company that operates a retail store in your state.

⁵ The corporation sells tangible personal property over the Internet, or by catalog, to residents of your state and participates in a loyalty points program with the in-state affiliate, allowing customers to earn points for purchases from the corporation and redeem the points for merchandise at the affiliate's in-state stores.

⁶ The corporation sells gift cards in affiliated in-state stores.

⁷ AL: See Code Section 40-23-190 entitled "Conditions for remote entity nexus."

⁸ CO: Statutory presumption of nexus.

⁹ CT: DRS has no published position.

¹⁰ FL: Nexus is considered on a case-by-case basis.

¹¹ GA: Please see O.C.G.A. 48-8-2(8)(J) and (K).

¹² GA: *Id.*

¹³ GA: *Id.*

¹⁴ ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate.

¹⁵ ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate. The services listed in this question would be sufficient to create nexus.

¹⁶ ID: The Commission has ruled that if the entity located within Idaho is performing services for the out-of-state affiliate, then it will create nexus for the out-of-state affiliate.

¹⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	In-state affiliate sells property ²	In-state affiliate accepts returns ³	Affiliate operates retail store ⁴	Loyalty points program ⁵	Sells gift cards ⁶
Kansas ¹⁸	Yes	Yes	Yes	Yes	Yes
Kentucky ¹⁹	No	Yes	No	Yes	No
Louisiana	Yes	Yes	Yes	Yes	Yes
Maine	Yes ²⁰	Yes	Yes ²¹	Yes ²²	Yes ²³
Maryland	Yes ²⁴	Yes	Yes ²⁵	Yes	No
Massachusetts	Yes	Yes	Depends	Yes	Yes
Michigan	Yes	Yes	Yes ²⁶	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes	Yes
Mississippi	No	Yes	No	Yes	No
Missouri	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes ²⁷	Yes	Yes ²⁸	Yes ²⁹	Yes
Nevada	Yes	Yes	Yes	Yes	Yes
New Jersey ³⁰	No	Yes	No	No	No
New Mexico	No	Yes	Yes	Yes	Yes
New York ³¹	No Response	No Response	No Response	No Response	No Response
North Carolina	No	Yes	Depends ³²	No Response ³³	Depends ³⁴
North Dakota	Yes	Yes	Yes	Yes	Yes
Pennsylvania	No	Yes	No	Yes ³⁵	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes
South Dakota ³⁶	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	No ³⁷	Yes ³⁸	No ³⁹

¹⁸ KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.

¹⁹ KY: Depends on whether the affiliates' activities contribute to establishing a marketplace in Kentucky.

²⁰ ME: Possibly; see 36 MRSA section 1754-B, subsection 1-A, paragraph (B).

²¹ ME: *Id.*

²² ME: Depending upon the specific facts.

²³ ME: Generally.

²⁴ MD: **Depends on facts & circumstances.**

²⁵ MD: *Id.*

²⁶ MI: See MCL 205.62b and 205.95a.

²⁷ NE: Assumes control or common ownership.

²⁸ NE: *Id.*

²⁹ NE: *Id.*

³⁰ NJ: Answers assume none of the factors of N.J.S.A. 54:32B-2(i)(2) have been met.

³¹ NY: See TSB-M-09(3)S, Definition of a Sales Tax Vendor is Expanded to Include Out-of-State Sellers with Related Businesses in New York State.

³² NC: Depends on the relationship and agreements between the parties.

³³ NC: G.S. 105-164.8 may apply.

³⁴ NC: Depends on the relationship and agreements between the parties.

³⁵ PA: Yes, when affiliate is solely located in Pennsylvania.

³⁶ SD: The state of South Dakota would need to look at all the circumstances in each situation.

³⁷ TN: Answer assumes that the affiliate's store in Tennessee does not take orders, perform customer service or distribute advertising materials on behalf of the Internet or catalog seller.

³⁸ TN: It appears that an agency relationship exists with the in-state affiliate which creates Tennessee nexus.

³⁹ TN: Answer assumes remote corporation has no physical presence in Tennessee or agency relationship with in-state stores.

State ¹	In-state affiliate sells property ²	In-state affiliate accepts returns ³	Affiliate operates retail store ⁴	Loyalty points program ⁵	Sells gift cards ⁶
Texas ⁴⁰	Yes	Yes	Yes	Yes	Yes
Utah	No ⁴¹	Yes	No ⁴²	Yes	Yes
Vermont ⁴³	No	No	No	No	No
Virginia	Depends	Depends	Depends	Depends	Depends
Washington	Yes ⁴⁴	Yes	Yes ⁴⁵	Yes	Depends ⁴⁶
West Virginia	No	Yes	Yes	No	Yes
Wisconsin	Yes	Yes	Depends	Yes	Yes ⁴⁷
Wyoming ⁴⁸	Yes	Yes	Yes ⁴⁹	Yes	Yes ⁵⁰

⁴⁰ TX: Texas Tax Code Section 151.107 provides that a “retailer engaged in business in this state” includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that “ownership” includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines “substantial” to mean a 50 percent ownership interest with the type of ownership (*i.e.*, beneficial, combined voting power, etc.) determined by the type of entity.

⁴¹ UT: The seller would have nexus if there is more than a 10 percent interest in ownership.

⁴² UT: *Id.*

⁴³ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁴⁴ WA: Would have nexus if in-state affiliate performs services for seller.

⁴⁵ WA: *Id.*

⁴⁶ WA: Would establish nexus if in-state affiliate performs services for seller.

⁴⁷ WI: Assumes the corporation and the affiliate are related as provided in sec. 77.51(13g)(d)1, 2 & 3, Wis. Stats. (2015-16).

⁴⁸ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁴⁹ WY: Nexus would be established provided there is a connection between the retail store and the Internet store such as [using a common logo, taking orders or accepting returns.]

⁵⁰ WY: Nexus is created as it represents inventory in Wyoming sold by an affiliate.

Nexus-Creating Activities: Sales and Use Tax — Activities with Affiliates (Part 2 of 2)

State ¹	Owens less than 5% of in-state affiliate ²	Owens more than 5% of in-state affiliate ³	Remote retailer accepts returned items purchased at in-state stores ⁴	Part of controlled group ⁵
Alabama ⁶	No Response	No Response	Yes	Yes
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes
California	No	No	No	Yes ⁷
Colorado	No	No Response ⁸	Yes	Yes
Connecticut ⁹	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes
Florida ¹⁰	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Depends ¹¹	No ¹²
Hawaii	Yes	Yes	Yes	Depends
Idaho	Yes	Yes	Yes	Yes
Illinois ¹³	No Response	No Response	No Response	No Response
Indiana	No	No	No	No
Iowa	Yes	Yes	Yes	Yes
Kansas ¹⁴	Yes	Yes	Yes	Yes ¹⁵
Kentucky	No ¹⁶	No ¹⁷	Yes	Yes
Louisiana	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The corporation makes remote sales to residents of your state and owns less than 5 percent of an in-state affiliate that shares the corporation's logo.

³ The corporation makes remote sales to residents of your state and owns at least 5 percent of an in-state affiliate that shares the corporation's logo.

⁴ The corporation makes remote sales to residents of your state and accepts returned items or exchanges items that were purchased from an affiliate's in-state stores.

⁵ The corporation is part of a controlled group with an affiliated entity that is physically located in your state.

⁶ AL: See Code Section 40-23-190 entitled "Conditions for remote entity nexus."

⁷ CA: Assuming the in-state affiliate performs services in this state in connection with tangible personal property to be sold by the retailer. (See Section 6203(c)(4).)

⁸ CO: Statutory presumption of nexus.

⁹ CT: DRS has no published position.

¹⁰ FL: Nexus is considered on a case-by-case basis.

¹¹ GA: Please see O.C.G.A. 48-8-2(8)(J) and (K).

¹² GA: Being affiliated with a company in the state does not by itself create nexus.

¹³ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

¹⁴ KS: K.S.A. 79-3702(h)(2)(A)(i) requires substantial ownership.

¹⁵ KS: Yes, if the conditions in K.S.A. 79-3702(b)(2)(A) or (B) are met.

¹⁶ KY: Depends on whether the affiliates' activities contribute to establishing a marketplace in Kentucky.

¹⁷ KY: *Id.*

State ¹	Owens less than 5% of in-state affiliate ²	Owens more than 5% of in-state affiliate ³	Remote retailer accepts returned items purchased at in-state stores ⁴	Part of controlled group ⁵
Maine	Yes ¹⁸	Yes ¹⁹	Yes ²⁰	Yes ²¹
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Depends
Michigan	Yes	Yes	Yes	Yes ²²
Minnesota	No Response ²³	No Response ²⁴	Yes	No Response ²⁵
Mississippi	No	No	Yes	No
Missouri	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes
New Jersey	No ²⁶	No ²⁷	Yes	No
New Mexico	Yes	Yes	Yes	No
New York ²⁸	No Response	No Response	No Response	No Response
North Carolina ²⁹	Depends	Depends	Depends	Depends
North Dakota	Yes	Yes	Yes	Yes
Pennsylvania	No	No	Yes	No
Rhode Island	Yes	Yes	Yes	Yes
South Dakota	Yes ³⁰	Yes ³¹	Yes	Yes
Tennessee	No	No	Yes	No
Texas ³²	Yes	Yes	Yes	Yes

¹⁸ ME: Possibly; see 36 MRSA section 1754-B, subsection 1-A, paragraph (B).

¹⁹ ME: *Id.*

²⁰ ME: Depending upon the specific facts.

²¹ ME: *Id.*

²² MI: See MCL 205.62b and 205.95a.

²³ MN: Affiliated company would need to advertise, promote or facilitate on the out-of-state corporation's behalf in order for the affiliated company to create nexus.

²⁴ MN: *Id.*

²⁵ MN: *Id.*

²⁶ NJ: Answer assumes none of the factors of N.J.S.A. 54:32B-2(i)(2) have been met.

²⁷ NJ: *Id.*

²⁸ NY: See TSB-M-09(3)S, Definition of a Sales Tax Vendor is Expanded to Include Out-of-State Sellers with Related Businesses in New York State.

²⁹ NC: Depends on the relationship and agreements between the parties.

³⁰ SD: The state of South Dakota would need to look at all the circumstances in each situation.

³¹ SD: *Id.*

³² TX: Texas Tax Code Section 151.107 provides that a "retailer engaged in business in this state" includes a retailer who: 1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or 2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer. 151.107(d) provides that "ownership" includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines "substantial" to mean a 50 percent ownership interest with the type of ownership (*i.e.*, beneficial, combined voting power, etc.) determined by the type of entity.

State ¹	Owns less than 5% of in-state affiliate ²	Owns more than 5% of in-state affiliate ³	Remote retailer accepts returned items purchased at in-state stores ⁴	Part of controlled group ⁵
Utah	No ³³	No ³⁴	Yes	Yes
Vermont	No ³⁵	No ³⁶	No Response	No ³⁷
Virginia	No	No	No	No ³⁸
Washington	No	No	Yes	No
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	No	Yes ³⁹	Yes	Yes ⁴⁰
Wyoming ⁴¹	Yes	Yes	Yes	No

³³ UT: The seller would have nexus if there is more than a 10 percent interest in ownership.

³⁴ UT: *Id.*

³⁵ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

³⁶ VT: *Id.*

³⁷ VT: *Id.*

³⁸ VA: No, unless the affiliated entity and retailer belong to a commonly controlled group and the affiliated entity maintains a distribution center, warehouse, fulfillment center, or similar location that facilitates the delivery of tangible personal property sold by the out-of-state dealer. *See* P.D. 13-166.

³⁹ WI: Assumes the corporation and the affiliate are related as provided in sec. 77.51(13g)(d)1, 2 & 3, Wis. Stats. **(2015-16)**.

⁴⁰ WI: *Id.*

⁴¹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

Nexus-Creating Activities: Sales and Use Tax — Internet Activities (Part 1 of 2)

State ¹	Maintains Web link to in-state third party ²	Web link to third party with in-state Web server ³	In-state affiliates with less than \$10,000 in sales ⁴	In-state affiliates with \$10,000 or more in sales ⁵	Per impression agreement ⁶	Per conversion agreement ⁷
Alabama	Yes	Yes	Yes	Yes	Yes	Yes
Arizona	No	No	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	No ⁸	Yes ⁹	Yes ¹⁰	Yes ¹¹
California	No	No	No	Yes ¹²	No	No ¹³
Colorado	No	No	No	No	No	Yes ¹⁴
Connecticut	No Response ¹⁵	No Response ¹⁶	Yes ¹⁷	Yes ¹⁸	No Response ¹⁹	No Response ²⁰
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida ²¹	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Depends ²²	No	No	Depends ²³	No	Depends ²⁴

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation uses an Internet link or enters into an affiliation linking arrangement with a third party that is located in your state.

³ The out-of-state corporation uses an Internet link or enters into an affiliation linking arrangement with a third party that maintains a website on a server that is located in your state.

⁴ The out-of-state corporation makes remote sales of tangible personal property to residents in your state from outside the state via a website and enters into an agreement with a resident of your state in which the corporation pays commissions or fees for referrals to the corporation's website. Assume the annual gross receipts from sales attributable to the arrangements total less than \$10,000.

⁵ The out-of-state corporation makes remote sales of tangible personal property to residents of your state outside the state via a website and enters into an agreement with a resident of your state in which the corporation pays commissions or fees for referrals to the corporation's website. Assume the corporation's annual gross receipts from the sales attributable to the arrangements total at least \$10,000.

⁶ The out-of-state corporation is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time the ad is displayed (per impression).

⁷ The out-of-state corporation is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid when a consumer clicks on the ad and buys a product from the out-of-state retailer (per conversion).

⁸ AR: See Arkansas Act 1001 of 2011, which amends Arkansas Code 26-52-117.

⁹ AR: *Id.*

¹⁰ AR: *Id.*

¹¹ AR: *Id.*

¹² CA: Assuming the retailer has at least \$10,000 in sales referred to it by in-state persons in the preceding 12 months and the retailer's total sales to purchasers in this state exceed \$1,000,000 in the preceding 12 months. (See Section 6203(c)(5)).

¹³ CA: This assumes that the in-state operator/advertiser is not engaged in solicitation in state and paid consideration based on completed sales. (See Reg. 1684, subd. (c)(3)-(4)).

¹⁴ CO: If affiliate presence in state used to establish market for retailer.

¹⁵ CT: DRS has no published position.

¹⁶ CT: *Id.*

¹⁷ CT: See Conn. Gen. Stat. § 12-407(a)(15)(A)(x); Special Notice 2011(6); Special Notice 2011(9).

¹⁸ CT: *Id.*

¹⁹ CT: DRS has no published position.

²⁰ CT: *Id.*

²¹ FL: Nexus is considered on a case-by-case basis.

²² GA: Depends on the volume of sales generated by referrals from in-state sources.

²³ GA: If the referrals from in-state sources exceed \$50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a "dealer" and must collect tax on all sales into the state.

²⁴ GA: *Id.*

State ¹	Maintains Web link to in-state third party ²	Web link to third party with in-state Web server ³	In-state affiliates with less than \$10,000 in sales ⁴	In-state affiliates with \$10,000 or more in sales ⁵	Per impression agreement ⁶	Per conversion agreement ⁷
Hawaii	No	No	Yes	Yes	Yes	Yes
Idaho	No	No	No Response ²⁵	No Response ²⁶	No Response ²⁷	No Response ²⁸
Illinois ²⁹	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No	No	No ³⁰	No ³¹	No ³²	No ³³
Louisiana	Yes	No	Yes	Yes	Yes	Yes
Maine	Yes	Yes	No	Yes	No	Yes ³⁴
Maryland	No	No	Yes	Yes	No	Yes
Massachusetts	No	No	Depends	Depends	No	No
Michigan	No	No ³⁵	No Response ³⁶	Yes ³⁷	No	No Response ³⁸
Minnesota	No Response ³⁹	Yes	No	Yes	No	No Response ⁴⁰
Mississippi	No	Yes	No	No	No	No
Missouri	Yes	Yes	No	Yes ⁴¹	Yes	Yes
Nebraska	No	No	No	No	No	No
Nevada	Yes ⁴²	Yes ⁴³	No	Yes	Yes ⁴⁴	Yes ⁴⁵
New Jersey	Yes ⁴⁶	Yes ⁴⁷	No	Yes	No	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes

²⁵ ID: The Tax Commission has made no rulings on this issue at this time.

²⁶ ID: *Id.*

²⁷ ID: *Id.*

²⁸ ID: *Id.*

²⁹ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

³⁰ KY: Depends on whether the in-state resident/operator's activities contribute to establishing a marketplace in Kentucky.

³¹ KY: *Id.*

³² KY: *Id.*

³³ KY: *Id.*

³⁴ ME: Provided the \$10,000 threshold is reached.

³⁵ MI: Assuming the seller does not own the server.

³⁶ MI: See MCL 205.52b(3) and 205.95a(3).

³⁷ MI: *Id.*

³⁸ MI: *Id.*

³⁹ MN: Will create nexus if sales are more than \$10,000 per year.

⁴⁰ MN: *Id.*

⁴¹ MO: In excess of \$10,000.

⁴² NV: The answer is "yes," if the corporation has a presence in Nevada and is benefitting from services paid for with tax dollars.

⁴³ NV: *Id.*

⁴⁴ NV: *Id.*

⁴⁵ NV: *Id.*

⁴⁶ NJ: Merely having one's website on a server located in New Jersey does not give the seller nexus. However, it would give nexus to whoever owns the server. Public Law 2014, c.13 amended N.J.S.A. 54:32B-2(i)(1)(C) to modify the definition of "seller" for sales occurring on or after July 1, 2014. N.J.S.A. 54:32B-2(i)(1)(C) creates a rebuttable presumption that an out-of-State seller who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business in New Jersey through in-State representatives. See Technical Bulletin-76.

⁴⁷ NJ: *Id.*

State ¹	Maintains Web link to in-state third party ²	Web link to third party with in-state Web server ³	In-state affiliates with less than \$10,000 in sales ⁴	In-state affiliates with \$10,000 or more in sales ⁵	Per impression agreement ⁶	Per conversion agreement ⁷
New York ⁴⁸	No Response	No Response	No Response	No Response	No Response	No Response
North Carolina	Yes	Yes	Yes ⁴⁹	Yes	No	No Response ⁵⁰
North Dakota	Yes	Yes	Yes	Yes	No	No
Pennsylvania	Depends ⁵¹	Yes	Depends ⁵²	Depends ⁵³	No	Yes
Rhode Island	Yes	Yes	Yes	Yes	No	Yes
South Dakota ⁵⁴	Yes	Yes	Yes	Yes	Yes	Yes
Tennessee	No	Yes	Yes ⁵⁵	Yes	No	No
Texas	No	No	No	No	No	No
Utah	No	Yes	Yes	Yes	No	No
Vermont ⁵⁶	No	No	No	No	No	No
Virginia	No ⁵⁷	No ⁵⁸	No	No	No	No
Washington ⁵⁹	Yes	No	Yes	Yes	No	No
West Virginia	No	No	No	Yes	Yes	Yes
Wisconsin	No ⁶⁰	No ⁶¹	No ⁶²	No ⁶³	No ⁶⁴	No ⁶⁵
Wyoming ⁶⁶	No	No	Yes ⁶⁷	Yes ⁶⁸	No	No

⁴⁸ NY: Situations similar to the facts presented in these questions would trigger a rebuttable presumption of nexus. See details at TSB-M-08(3)S, New Presumption Applicable to Definition of Sales Tax Vendor, TSB-M-08(3.1)S. Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.

⁴⁹ NC: Nexus created, but transactions may not be subject to tax pursuant to G.S. 105-164.8(b)(3).

⁵⁰ NC: No response without details of the agreement between the parties.

⁵¹ PA: Depends on nature of agreement.

⁵² PA: *Id.*

⁵³ PA: *Id.*

⁵⁴ SD: See pending litigation of 2016 Senate Bill 106.

⁵⁵ TN: Effective July 1, 2016, a dealer will not have nexus for amounts less than \$10,000. See 2015 Tenn. Pub. Acts Ch. 514 §27 (effective July 1, 2016) passed Apr. 22, 2015.

⁵⁶ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁵⁷ VA: See P.D. 05-28 and 05-128.

⁵⁸ VA: See P.D. 00-53.

⁵⁹ WA: Effective Sept. 1, 2015, Washington adopted a presumption of nexus for Click through Retail Transactions.

⁶⁰ WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (2015-16), and Sec. 77.51(13g)(d), Wis. Stats. (2015-16).

⁶¹ WI: Yes, if the out-of-state company owns or leases/rents space on the server.

⁶² WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (2015-16), and Sec. 77.51(13g)(d), Wis. Stats. (2015-16).

⁶³ WI: *Id.*

⁶⁴ WI: *Id.*

⁶⁵ WI: *Id.*

⁶⁶ WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁶⁷ WY: Independent sales contractors located in our state and using a website commission or referral model establish nexus for the out of state corporation.

⁶⁸ WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Internet Activities (Part 2 of 2)

State ¹	Owens Internet server ²	Owens Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use of server) ⁴	Leases space on third-party's Internet server (shared use of server space) ⁵	Leases space on third-party's network of Internet servers (data on less than 6 months) ⁶	Leases space on third-party's network of Internet servers (data on more than 6 months) ⁷	Paid Web-hosting provider with server ⁸
Alabama	Yes ⁹	Yes	Yes	No	Yes	Yes	No
Arizona	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	No
California	Yes	Yes	Yes ¹⁰	Yes ¹¹	Yes ¹²	Yes ¹³	No
Colorado	Yes	Yes	Yes	Yes	Yes	Yes	No Response ¹⁴
Connecticut ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹⁶	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Yes	Depends	Depends	Depends	No
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes	No
Illinois ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation owns an Internet server located in your state.

³ The out-of-state corporation owns an Internet server located in your state and hires third-party technicians located in your state to keep the server functioning.

⁴ The out-of-state corporation leases a third-party's Internet server located in your state. Assume that the server is used exclusively by the corporation.

⁵ The out-of-state corporation leases space on a third-party's Internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.

⁶ The out-of-state corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server in your state for less than six months during the year.

⁷ The out-of-state corporation leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the corporation's data is on the third-party's Internet server for more than six months during the year.

⁸ The out-of-state corporation does not own or lease property in your state, but pays a Web-hosting provider with a server located in your state to provide the corporation Web services to sell products over the Internet.

⁹ AL: Owns property in Alabama.

¹⁰ CA: This assumes that this refers to a lease as defined in Regulation 1660 of an in-state server.

¹¹ CA: *Id.*

¹² CA: *Id.*

¹³ CA: *Id.*

¹⁴ CO: No determination yet.

¹⁵ CT: DRS has no published position.

¹⁶ FL: Nexus is considered on a case-by-case basis.

¹⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Owns Internet server ²	Owns Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use of server) ⁴	Leases space on third-party's Internet server (shared use of server space) ⁵	Leases space on third-party's network of Internet servers (data on less than 6 months) ⁶	Leases space on third-party's network of Internet servers (data on more than 6 months) ⁷	Paid Web-hosting provider with server ⁸
Indiana	Yes	Yes	Yes	Yes	Not Applicable ¹⁸	Not Applicable ¹⁹	Not Applicable ²⁰
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No Response	No Response	No Response	Yes
Kentucky	Yes	Yes	Yes	Yes	Yes	Yes	No
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes	No
Maine	Yes	Yes	No ²¹	No ²²	No	No	No
Maryland	Yes	Yes	Yes	Yes	Yes	Yes	No
Massachusetts	Yes	Yes	Depends	Depends	Depends	Depends	No
Michigan	Yes	Yes	Yes	Yes	Yes	Yes	No
Minnesota	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes	Yes	Yes	No
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	Yes ²⁸	No
Nevada ²⁹	Yes	Yes	Yes	Yes	Yes	Yes	No
New Jersey	Yes	Yes	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes	Yes	Yes	No
North Carolina	Yes	Yes	Yes	Yes	Yes	Yes	No ³⁰
North Dakota	Yes	Yes	No	No	No	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	No
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota ³¹	Yes	Yes	Yes	Yes	Yes	Yes	No
Tennessee	Yes	Yes	Yes	Yes	Yes	Yes	Yes

¹⁸ IN: The Department is still in the process of determining its position.

¹⁹ IN: *Id.*

²⁰ IN: *Id.*

²¹ ME: Depends on type of lease.

²² ME: Probably not; depends on the facts.

²³ NE: Constitutes physical presence under *Quill*.

²⁴ NE: *Id.*

²⁵ NE: *Id.*

²⁶ NE: *Id.*

²⁷ NE: *Id.*

²⁸ NE: *Id.*

²⁹ NV: The answer is "yes," if the corporation has a presence in Nevada and is benefitting from services paid for with tax dollars.

³⁰ NC: Provided that G.S. 105-164.8(b)(3) does not apply.

³¹ SD: See pending litigation of 2016 Senate Bill 106.

State ¹	Owns Internet server ²	Owns Internet server and hires third-party technicians ³	Leases third-party's Internet server (exclusive use of server) ⁴	Leases space on third-party's Internet server (shared use of server space) ⁵	Leases space on third-party's network of Internet servers (data on less than 6 months) ⁶	Leases space on third-party's network of Internet servers (data on more than 6 months) ⁷	Paid Web-hosting provider with server ⁸
Texas	Yes	Yes	Yes	No Response ³²	No Response ³³	No Response ³⁴	No
Utah	Yes	Yes	Yes	Yes	Yes	Yes	No
Vermont	Yes	Yes	No Response	No ³⁵	No ³⁶	No ³⁷	No ³⁸
Virginia	No	No	No	No	No	No	No
Washington	Yes	Yes	Yes	No	No	No	No
West Virginia	Yes	Yes	Yes	Yes	No	Yes	Yes
Wisconsin	Yes	Yes	Yes	No ³⁹	No ⁴⁰	No ⁴¹	No ⁴²
Wyoming ⁴³	Yes	Yes	Yes	Yes ⁴⁴	Yes ⁴⁵	No Response ⁴⁶	No

³² TX: A taxpayer is not considered engaged in business in Texas if its activity is as a user of an Internet Hosting service. See Texas Tax Code **Section** 151.108.

³³ TX: *Id.*

³⁴ TX: *Id.*

³⁵ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

³⁶ VT: *Id.*

³⁷ VT: *Id.*

³⁸ VT: *Id.*

³⁹ WI: Assumes that physical possession of the servers and control of the servers remains with the lessor, rather than the lessee.

⁴⁰ WI: *Id.*

⁴¹ WI: *Id.*

⁴² WI: *Id.*

⁴³ WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

⁴⁴ WY: Remote sales in conjunction with data stored on a server in Wyoming represent inventory in Wyoming and thus nexus.

⁴⁵ WY: *Id.*

⁴⁶ WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Activities Related to Digital Property (Part 1 of 2)

State ¹	Sells digital content downloads ²	Sells access to digital content ³	Free canned software for downloads ⁴	Sells canned software then visits ⁵	Sells custom software ⁶	Sells software licenses ⁷
Alabama ⁸	No Response	No Response	No Response	No Response	No Response	No Response
Arizona	Yes	Yes	Yes	Yes	No ⁹	Yes
Arkansas	No	No	No	Yes	No	No
California	No	No	No	Yes ¹⁰	No	No
Colorado	No Response ¹¹	No Response ¹²	No Response ¹³	Yes ¹⁴	No	No
Connecticut ¹⁵	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	No	Yes	Yes	Yes	Yes
Florida ¹⁶	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	No	No	Yes	No	No
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No	No	No	Yes	No	No
Illinois ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No ¹⁸	No	No ¹⁹	Yes ²⁰	No	No ²¹
Iowa	No	No	No	Yes	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation makes remote sales of digital content, such as music, that is downloaded by residents of your state.

³ **The out-of-state corporation makes remote sales of digital content, such as e-books, music, TV shows and movies, that is accessed electronically, but not downloaded, by residents of your state.**

⁴ The out-of-state corporation electronically provides "canned software" to residents in your state and then makes remote sales of digital content, such as music and videos, that is downloaded by residents of your state.

⁵ The out-of-state corporation makes remote sales of "canned software" to residents in your state and then sends a representative to customize it to meet the customer's specific needs.

⁶ The out-of-state corporation makes remote sales of customized software in your state.

⁷ The out-of-state corporation owns software licenses that are purchased by residents of your state.

⁸ **AL: Activities related to digital property is currently under study by a digital work group in Alabama.**

⁹ AZ: Answer assumes the software is delivered by U.S. mail or common carrier and not by the corporation or its employees or agents. Substantial nexus may be created if the listed activity is significantly associated with the corporation's ability to establish and maintain a business market in Arizona.

¹⁰ CA: If the software is downloaded electronically and no tangible personal property is transferred, the sale would not be taxable but the activity creates nexus.

¹¹ CO: Transaction is taxable, but the activity does not create nexus.

¹² **CO: Under review.**

¹³ CO: Transaction is taxable, but the activity does not create nexus.

¹⁴ CO: Transaction is taxable and the activity creates nexus.

¹⁵ CT: DRS has no published position.

¹⁶ FL: Nexus is considered on a case-by-case basis.

¹⁷ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

¹⁸ **IN: The answer may change based on legislative developments in 2017.**

¹⁹ **IN: *Id.***

²⁰ IN: Taxability based on sale of canned software, not customization.

²¹ **IN: The answer may change based on legislative developments in 2017.**

State ¹	Sells digital content downloads ²	Sells access to digital content ³	Free canned software for downloads ⁴	Sells canned software then visits ⁵	Sells custom software ⁶	Sells software licenses ⁷
Kansas	No	No Response	Yes	Yes	No	No
Kentucky	No	No ²²	No ²³	Yes	No	Yes
Louisiana	No	No	No	Yes	No	No
Maine	No	No	No	Yes	No	No
Maryland	No	No	No	Yes	No	No
Massachusetts	No ²⁴	Depends	Depends ²⁵	Yes ²⁶	Depends ²⁷	Yes ²⁸
Michigan	No	No	No	Yes	No	No
Minnesota	No	No	No	Yes	No	Yes
Mississippi	No	No	No	Yes	No ²⁹	No
Missouri	No	No	No	Yes	No	Yes
Nebraska	No	No	No	Yes	No	No
Nevada	No	No	No	Yes	No	No
New Jersey	No ³⁰	No	No ³¹	Yes ³²	No ³³	No ³⁴
New Mexico	Yes	No	Yes	Yes	Yes	Yes
New York	No	No	No	Yes	No	No
North Carolina	No	No	No	Yes	No	No
North Dakota	No	No	Depends ³⁵	Depends ³⁶	No	Yes
Pennsylvania	No	No	No	Yes	No	No
Rhode Island	No	No ³⁷	No	Yes	No	Yes
South Dakota	No	No	No	Yes	No	No
Tennessee ³⁸	Yes	Yes	Yes	Yes	No	Yes

²² **KY: Remote access to digital property (defined under KRS 139.010) is taxable under KRS 139.200 but making the products available does not necessarily create nexus.**

²³ KY: Remote sales of videos may create liability for the gross revenues and excise taxes for multichannel video programming services in KRS Chapter 136.

²⁴ MA: See 830 CMR 64H.1.3 & TIR 06-15.

²⁵ MA: *Id.*

²⁶ MA: *Id.*

²⁷ MA: *Id.*

²⁸ MA: *Id.*

²⁹ MS: Use tax due from consumer in state.

³⁰ NJ: Answers assume none of the factors in N.J.S.A. 54:32B-2(i)(2) have been met.

³¹ NJ: *Id.*

³² NJ: *Id.*

³³ NJ: *Id.*

³⁴ NJ: *Id.*

³⁵ ND: Yes/No. Downloaded software is taxable but other digital products such as music and videos are exempt.

³⁶ ND: Yes/No. Customized charges may be exempt if itemized from the sale of the canned software.

³⁷ **RI: TV subscription services are taxable.**

³⁸ **TN: Effective July 1, 2016, out-of-state dealers who engage in regular or systematic solicitation of consumers in this state through any means and make sales that exceed \$500,000 to consumers in this state during the previous 12-month period also have substantial nexus with this state. See Tenn. Reg & R. 1320-05-01-.129.**

State ¹	Sells digital content downloads ²	Sells access to digital content ³	Free canned software for downloads ⁴	Sells canned software then visits ⁵	Sells custom software ⁶	Sells software licenses ⁷
Texas	No	No	Yes ³⁹	Yes ⁴⁰	Yes ⁴¹	Yes ⁴²
Utah	No	No	No	Yes	No	No
Vermont ⁴³	No	No	No	No	No	No
Virginia	No ⁴⁴	No	No ⁴⁵	No ⁴⁶	No	No
Washington	No	No	No	Yes	No	No
West Virginia	No	No	No	Yes	No	No
Wisconsin	No	No	Yes	Yes	No	Yes
Wyoming	No ⁴⁷	No ⁴⁸	No ⁴⁹	Yes ⁵⁰	No ⁵¹	No ⁵²

³⁹ TX: A seller who licenses software, canned or custom, for use in Texas (whether for own use or by others, in tangible, electronic or digital form, or via remote access) is engaged in business in this state.

⁴⁰ TX: *Id.*

⁴¹ TX: *Id.*

⁴² TX: *Id.*

⁴³ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁴⁴ VA: *See* P.D. 04-38.

⁴⁵ VA: *See* P.D. 04-38 and 04-173.

⁴⁶ VA: *See* P.D. 96-339 and 04-173.

⁴⁷ WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁴⁸ **WY: In order for a taxable sale of a specified digital product to occur, the purchaser must receive permanent possession of the property purchased. Since the content is accessed but not downloaded, the customer does not gain possession and as such a sale has not occurred. (See W.S. 39-15-103(a)(i)(P).) Since the seller is not making a sale in our state, any question of nexus is academic.**

⁴⁹ WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁵⁰ WY: *Id.*

⁵¹ WY: *Id.*

⁵² WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Activities Related to Digital Property (Part 2 of 2)

State ¹	Licenses website for webinar ²	Sells data ³	Sells remote access to canned software ⁴	Sells digital magazine or newspaper subscriptions ⁵	Sells appliances with control devices ⁶
Alabama ⁷	No Response	No Response	No Response	No Response	No Response
Arizona	Yes	Yes	Yes	Yes	Yes
Arkansas	No	Yes	No	No	No
California	No	No	No	No	No
Colorado	No Response ⁸	Yes ⁹	No Response ¹⁰	Yes ¹¹	No Response
Connecticut ¹²	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida ¹³	No Response	No Response	No Response	No Response	No Response
Georgia	No	Depends	No	No	Depends
Hawaii	Yes	Yes	Yes	Yes	Yes
Idaho	No	Yes	No	No	No Response ¹⁴
Illinois ¹⁵	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	No ¹⁶	No ¹⁷	No
Iowa	No	No	No	No	No ¹⁸
Kansas	No	No	No	No Response	No Response
Kentucky	No	Yes	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation licenses to an in-state consumer permission to use its website for a webinar.

³ The out-of-state corporation sells data, such as music files, to residents in your state and the data is stored on a server located in your state.

⁴ The out-of-state corporation sells remote access to canned software to customers located in your state.

⁵ The out-of-state out-of-state corporation sells digital magazine or newspaper subscriptions from a remote Internet platform to an in-state user who downloads the material in your state.

⁶ The out-of-state corporation makes remote sales of appliances equipped with control devices from which an in-state use can control the appliance via remote Internet platform.

⁷ **AL: Activities related to digital property is currently under study by a digital work group in Alabama.**

⁸ CO: Not yet determined.

⁹ CO: If retailer owns server.

¹⁰ CO: No determination yet.

¹¹ CO: Transaction is taxable and the activity creates nexus.

¹² CT: DRS has no published position.

¹³ FL: Nexus is considered on a case-by-case basis.

¹⁴ ID: The Tax Commission has made no ruling on this issue.

¹⁵ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

¹⁶ **IN: The answer may change based on legislative developments in 2017.**

¹⁷ **IN: *Id.***

¹⁸ IA: No nexus assuming the in-state user is not related to the out-of-state corporation.

State ¹	Licenses website for webinar ²	Sells data ³	Sells remote access to canned software ⁴	Sells digital magazine or newspaper subscriptions ⁵	Sells appliances with control devices ⁶
Louisiana	No	No	No	Yes	Yes
Maine	No	No	No	No	No
Maryland	No	No	No	No	No
Massachusetts	No	No	Yes	Depends	Depends
Michigan	No	Yes	No	No	No
Minnesota	No	Yes	No	No	Depends ¹⁹
Mississippi	No	Yes	No ²⁰	No	No
Missouri	Yes	Yes	No	No	No ²¹
Nebraska	No	No ²²	No	No	No
Nevada	No	No	No	No	No
New Jersey	No	Yes ²³	No	No	No ²⁴
New Mexico	Yes	Yes	Yes	Yes	Yes
New York	No	No	No	No	No
North Carolina	No	Yes	No	No	No
North Dakota	Yes	No	Yes	No	No
Pennsylvania	Yes ²⁵	Yes	No	No	No
Rhode Island	No	No	No ²⁶	No	No
South Dakota	No	Yes	No	No	No
Tennessee ²⁷	No	Yes	Yes	Yes	No
Texas	Yes ²⁸	Yes	No ²⁹	No	No
Utah	No	Yes	No	No	No
Vermont	No ³⁰	Yes	No ³¹	No³²	No³³
Virginia	No	No	No	No	No
Washington	No	No ³⁴	No	No	No

¹⁹ MN: If the remote item is located in MN and the Vendor maintains ownership of the item nexus is created.

²⁰ MS: Use Tax due from consumer in state.

²¹ MO: Assuming the sale of the appliance is not subject to tax.

²² NE: Unless the company owns or leases the server.

²³ NJ: Answer assumes server is owned by out-of-state corporation.

²⁴ NJ: Answer assumes no lease or rental of controller.

²⁵ PA: Website is on a server in Pennsylvania.

²⁶ RI: Would be subject to tax if the customer downloaded the software.

²⁷ **TN: Effective July 1, 2016, out-of-state dealers who engage in regular or systematic solicitation of consumers in this state through any means and make sales that exceed \$500,000 to consumers in this state during the previous 12-month period also have substantial nexus with this state. See Tenn. Reg & R. 1320-05-01-.129.**

²⁸ TX: A seller who licenses software, canned or custom, for use in Texas (whether for own use or by others, in tangible, electronic or digital form, or via remote access) is engaged in business in this state.

²⁹ TX: Nexus is created if the software program enters the state.

³⁰ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

³¹ VT: *Id.*

³² VT: *Id.*

³³ VT: *Id.*

³⁴ WA: If the corporation owns the server, then nexus is established.

State¹	Licenses website for webinar²	Sells data³	Sells remote access to canned software⁴	Sells digital magazine or newspaper subscriptions⁵	Sells appliances with control devices⁶
West Virginia	Yes	Yes	No	No	Yes
Wisconsin	No	Yes ³⁵	No	No	Depends
Wyoming ³⁶	No	Yes ³⁷	Yes	No	No

³⁵ WI: Yes, if the out-of-state company owns or leases/rents the server.

³⁶ WY: Remote sales itself are not enough to trigger nexus. Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

³⁷ WY: Nexus is created as the data stored on a server in Wyoming represent inventory in Wyoming.

Nexus-Creating Activities: Sales and Use Tax — Distribution and Delivery (Part 1 of 2)

State ¹	Picks up defective products ²	Picks up raw materials ³	Travels in state one to 6 times ⁴	Travels in state 6-12 times ⁵	Travels in state more than 12 times ⁶
Alabama	Yes	Yes	No	No	No
Arizona	Yes	Yes	No ⁷	No ⁸	No ⁹
Arkansas	Yes	Yes	No	No	No
California	Yes	No	No	No	No
Colorado	Yes	Yes	No Response ¹⁰	No Response ¹¹	No Response ¹²
Connecticut ¹³	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes
Florida ¹⁴	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Yes	Depends	Depends	Depends
Hawaii	Yes	No	No	No	No
Idaho	Yes	Yes	No Response ¹⁵	No Response ¹⁶	No Response ¹⁷
Illinois ¹⁸	No Response	No Response	No Response	No Response	No Response
Indiana	Yes	Yes	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation makes remote sales into your state and picks up defective products or scrap materials in your state in taxpayer-owned vehicles.

³ The out-of-state corporation makes remote sales into your state and picks up raw materials in your state in taxpayer-owned vehicles.

⁴ The out-of-state corporation makes remote sales into your state and travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

⁵ The out-of-state corporation makes remote sales into your state and travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

⁶ The out-of-state corporation makes remote sales into your state and travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.

⁷ AZ: Answer assumes delivery of remote sales is made by U.S. mail or common carrier and not by the corporation or its employees or agents. Substantial nexus may be created if the listed activity is significantly associated with the corporation's ability to establish and maintain a business market in Arizona.

⁸ AZ: *Id.*

⁹ AZ: *Id.*

¹⁰ CO: Not determined yet.

¹¹ CO: *Id.*

¹² CO: *Id.*

¹³ CT: DRS has no published position.

¹⁴ FL: Nexus is considered on a case-by-case basis.

¹⁵ ID: This is a fact scenario that the Commission has not considered.

¹⁶ ID: *Id.*

¹⁷ ID: *Id.*

¹⁸ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Picks up defective products ²	Picks up raw materials ³	Travels in state one to 6 times ⁴	Travels in state 6-12 times ⁵	Travels in state more than 12 times ⁶
Kentucky	Yes	Yes	No	No	No
Louisiana	Yes	No	No	No	No
Maine	Yes	Yes	No	No ¹⁹	No ²⁰
Maryland	Yes	Yes	No	No	No
Massachusetts	Yes	Yes	No	No	No
Michigan	Yes	Yes	Yes	Yes	Yes
Minnesota ²¹	No Response	No Response	No Response	No Response	No Response
Mississippi	No	No	No ²²	No ²³	No ²⁴
Missouri	Yes	Yes	No	No	No
Nebraska	Yes	Yes	No	No	No
Nevada	Yes	No	No ²⁵	No ²⁶	No ²⁷
New Jersey	Yes	No	No	No	No
New Mexico	Yes	Yes	No	No	No
New York	No	No	No	No	No
North Carolina	Yes²⁸	Yes²⁹	No	No	No
North Dakota	Yes	Yes	No ³⁰	No ³¹	No ³²
Pennsylvania	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	No	No	No
South Dakota	Yes	Yes	Yes ³³	Yes ³⁴	Yes ³⁵
Tennessee	Yes ³⁶	No	No	No	No
Texas	Yes ³⁷	No	No ³⁸	No ³⁹	No ⁴⁰
Utah	Yes	Yes	No	No	No

¹⁹ ME: Answer may change depending on exactly what the corporation's employees are doing in Maine.

²⁰ ME: *Id.*

²¹ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

²² MS: Unless to service Mississippi customers.

²³ MS: *Id.*

²⁴ MS: *Id.*

²⁵ NV: The answer is "no," unless the travel through the state is for the purpose of creating and/or maintaining a market in Nevada.

²⁶ NV: *Id.*

²⁷ NV: *Id.*

²⁸ NC: **See G.S. 105-164.8(6).**

²⁹ NC: *Id.*

³⁰ ND: Must be delivering or servicing accounts/customers in North Dakota.

³¹ ND: *Id.*

³² ND: *Id.*

³³ SD: Traveling through the state, with no business contacts in the state, does not constitute nexus. Traveling to the state with any business contact, even if they do not pickup or deliver goods, establishes nexus.

³⁴ SD: *Id.*

³⁵ SD: *Id.*

³⁶ TN: Answer assumes that pick-up is made for the consumer.

³⁷ TX: The collection and/or removal of waste products is a taxable real property service in Texas.

³⁸ TX: Answer assumes travel is not connected to creating or establishing a market in Texas.

³⁹ TX: *Id.*

⁴⁰ TX: *Id.*

State ¹	Picks up defective products ²	Picks up raw materials ³	Travels in state one to 6 times ⁴	Travels in state 6-12 times ⁵	Travels in state more than 12 times ⁶
Vermont	Yes	Yes	No ⁴¹	No ⁴²	No ⁴³
Virginia	No	No	No	No	No
Washington	Yes ⁴⁴	No	No ⁴⁵	No ⁴⁶	No ⁴⁷
West Virginia	Yes	Yes	No	No	No
Wisconsin	Yes	Yes	Depends ⁴⁸	Depends ⁴⁹	Depends ⁵⁰
Wyoming ⁵¹	Yes	No	No	No	No

⁴¹ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁴² VT: *Id.*

⁴³ VT: *Id.*

⁴⁴ WA: Picking up defective products from customers provides customer service and establishes nexus.

⁴⁵ WA: If they provide customer service, then nexus established.

⁴⁶ WA: *Id.*

⁴⁷ WA: *Id.*

⁴⁸ WI: Traveling through, does not create nexus. Traveling to, depends on purpose.

⁴⁹ WI: *Id.*

⁵⁰ WI: *Id.*

⁵¹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

Nexus-Creating Activities: Sales and Use Tax — Distribution and Delivery (Part 2 of 2)

State ¹	Back hauls ²	Holds title to electricity ³	Holds title to natural gas ⁴	Delivers goods into state via contract carrier ⁵
Alabama	Yes ⁶	No	No	Yes
Arizona	Yes	No ⁷	No ⁸	Yes
Arkansas	Yes	No	No	No
California	Yes	No	No	No
Colorado	Yes ⁹	No ¹⁰	Yes	No
Connecticut ¹¹	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	No
Florida ¹²	No Response	No Response	No Response	No Response
Georgia	Yes	No	No	Depends
Hawaii	Yes	No	No	Yes
Idaho	Yes	No Response ¹³	No Response ¹⁴	No Response ¹⁵
Illinois ¹⁶	No Response	No Response	No Response	No Response
Indiana	Yes	Yes	Yes	No
Iowa	Yes	Yes	Yes	No
Kansas	Yes	No	No	No Response
Kentucky	Yes ¹⁷	No	No	No
Louisiana	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The corporation makes remote sales into your state and "back hauls" (i.e., picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.

³ The corporation makes remote sales into your state and holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).

⁴ The corporation makes remote sales into your state and holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).

⁵ The out-of-state corporation makes remote sales into your state and delivers goods into your state via contract carrier.

⁶ AL: If the pick up or delivery is made in a company vehicle in this state.

⁷ AZ: Answer assumes the corporation does not own the actual wires or pipelines in Arizona.

⁸ AZ: *Id.*

⁹ CO: Back hauls implies retailer delivered into state.

¹⁰ CO: Electricity not TPP.

¹¹ CT: DRS has no published position.

¹² FL: Nexus is considered on a case-by-case basis.

¹³ ID: The sale of utilities is not taxable in Idaho, thus it is unlikely that the company is making a taxable sale into this state from a remote location.

¹⁴ ID: *Id.*

¹⁵ ID: This is a fact scenario that the Commission has not considered.

¹⁶ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

¹⁷ KY: Depends upon additional facts and circumstances.

State ¹	Back hauls ²	Holds title to electricity ³	Holds title to natural gas ⁴	Delivers goods into state via contract carrier ⁵
Maine	Yes	No	No	Yes ¹⁸
Maryland	No	No	No	Yes
Massachusetts	Yes	No	Yes	Depends
Michigan	Yes	Yes	Yes	Yes
Minnesota	No Response ¹⁹	No	No	No
Mississippi	No	No	No	No
Missouri	Yes	No	No	Yes
Nebraska	Yes ²⁰	Yes ²¹	Yes ²²	No
Nevada	Yes	No	No	No
New Jersey	Yes	No	No	No
New Mexico	Yes	No	No	Yes
New York	Depends ²³	No	No	Depends ²⁴
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes	No	No	No
Pennsylvania	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	Yes
South Dakota	No	No	No	Yes
Tennessee	Yes ²⁵	No	No	Yes ²⁶
Texas	Yes	No	No	No
Utah	Yes	No	No	No
Vermont	No ²⁷	No Response	No Response	No ²⁸
Virginia	No	No	No	Yes ²⁹
Washington	No ³⁰	No	No	No
West Virginia	No	Yes	Yes	Yes

¹⁸ ME: Answer may be “no” under certain facts.

¹⁹ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

²⁰ NE: Assuming one of the locations is in the state.

²¹ NE: May not be within the definition of “engaged in business” under Neb. Rev. Stat § 77-2701.13, but constitutes physical presence under *Quill*.

²² NE: *Id.*

²³ NY: Depends on whether delivery constitutes regular or systematic delivery in accordance with Tax Law Section 1101(b)(8)(D) and Regulations Section 526.10(a)(5).

²⁴ NY: *Id.*

²⁵ TN: Answer assumes that the delivery made prior to the backhaul was made to a Tennessee customer.

²⁶ TN: Answer assumes agency relationship exists.

²⁷ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

²⁸ VT: *Id.*

²⁹ VA: 58.1-612 deems nexus for out-of-state dealers that make regular deliveries of tangible personal property in Virginia by means other than common carrier, including by contract carrier. (See PD 93-141).

³⁰ WA: If delivery takes place in Washington, nexus established.

State¹	Back hauls²	Holds title to electricity³	Holds title to natural gas⁴	Delivers goods into state via contract carrier⁵
Wisconsin	Yes	No	No	No
Wyoming	No ³¹	No ³²	No ³³	No ³⁴

³¹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

³² WY: *Id.*

³³ WY: *Id.*

³⁴ WY: Contract carriers are unrelated third party freight carriers that operate via a particular shipping agreement with their customers. As such they are not agents of the seller so nexus is not created.

Nexus-Creating Activities: Sales and Use Tax — Third-Party Solicitation Activities and Attributional Nexus (Part 1 of 2)

State ¹	Distribute promotional materials ²	Electronic promotional materials ³	Solicit sales in person ⁴	Solicit sales by telephone ⁵	Demonstrate product in person ⁶
Alabama	Yes	No	Yes	No	Yes
Arizona ⁷	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	No	Yes
California	Yes	No ⁸	Yes	No ⁹	Yes
Colorado	Yes	Yes	Yes	No	Yes
Connecticut	No Response ¹⁰	No Response ¹¹	Yes	No Response ¹²	Yes
District of Columbia	Yes	No	Yes	No	Yes
Florida ¹³	No Response	No Response	No Response	No Response	No Response
Georgia	Yes	Depends	Yes	Depends ¹⁴	Yes
Hawaii	Yes	No	Yes	Depends	No
Idaho	No	No	Yes	Yes ¹⁵	Yes
Illinois ¹⁶	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No
Iowa	No	No	Yes	No	Yes
Kansas	Yes	No	Yes	Yes ¹⁷	Yes
Kentucky	No ¹⁸	No ¹⁹	Yes	No ²⁰	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The corporation makes remote sales into your state and hires a third party to distribute flyers, coupons, and other printed promotional materials.

³ The corporation makes remote sales into your state and hires a third party to electronically distribute via e-mail or other means electronic equivalents of flyers, coupons, and other printed promotional materials.

⁴ The corporation makes remote sales into your state and hires a third party to solicit sales in person.

⁵ The corporation makes remote sales into your state and hires a third party to solicit sales by telephone.

⁶ The corporation makes remote sales into your state and hires a third party to demonstrate a product in person.

⁷ AZ: Answers assume the third party is engaged in the listed activities within the state.

⁸ CA: This assumes that the third party is not located in this state.

⁹ CA: *Id.*

¹⁰ CT: DRS has no published position.

¹¹ CT: *Id.*

¹² CT: *Id.*

¹³ FL: Nexus is considered on a case-by-case basis.

¹⁴ GA: If the referrals from in-state sources exceed \$50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a "dealer" and must collect tax on all sales into the state.

¹⁵ ID: Telephone calls from in-state.

¹⁶ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

¹⁷ KS: If the third party is located in Kansas.

¹⁸ KY: Depends upon additional facts and circumstances.

¹⁹ KY: *Id.*

²⁰ KY: *Id.*

State ¹	Distribute promotional materials ²	Electronic promotional materials ³	Solicit sales in person ⁴	Solicit sales by telephone ⁵	Demonstrate product in person ⁶
Louisiana	No	No	Yes	Yes	Yes
Maine	No	No	Yes	Yes ²¹	Yes
Maryland	Yes	No	Yes	No ²²	Yes
Massachusetts	No	No	No	No	Yes
Michigan	No	No	Yes	No ²³	Yes
Minnesota	No	No	No Response ²⁴	No Response ²⁵	No Response ²⁶
Mississippi	No	No	Yes	No	No ²⁷
Missouri	Yes	Yes ²⁸	Yes	Yes ²⁹	Yes
Nebraska	Yes	No	Yes	No ³⁰	Yes
Nevada	Yes	No	Yes	No	Yes
New Jersey	No	No	Yes	No	Yes
New Mexico	Yes	Yes	Yes	No	Yes
New York	No	No	Yes	No	Yes
North Carolina	No	No	Yes	No Response ³¹	Yes
North Dakota	Yes	No	Yes	Yes	Yes
Pennsylvania	Yes	No	Yes	Yes	Yes
Rhode Island	Yes	No	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes	Yes	Yes
Tennessee	No	No	Yes	No ³²	Yes
Texas	No	No	Yes	No ³³	Yes
Utah	No	No	Yes	No	Yes ³⁴
Vermont	No ³⁵	No ³⁶	No Response	No Response	No Response
Virginia	No	No	Yes	No ³⁷	Depends

²¹ ME: Provided 3rd party is located in Maine.

²² MD: **If solicited not physically in Maryland.**

²³ MI: Assumes the third party is not physically present in Michigan.

²⁴ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

²⁵ MN: *Id.*

²⁶ MN: *Id.*

²⁷ MS: Unless soliciting sales.

²⁸ MO: All responses assume third party is in Missouri.

²⁹ MO: *Id.*

³⁰ NE: If the corporation utilizes a telemarketing service location in Nebraska to solicit sales, then nexus is established.

³¹ NC: If third party located in North Carolina, then Yes.

³² TN: Answer assumes that solicitation by telephone is not done in Tennessee.

³³ TX: Answer assumes that telephone solicitation is performed from location outside of Texas and that solicitor and client perform no other activities in Texas.

³⁴ UT: Must be demonstrating products on a systematic basis.

³⁵ VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

³⁶ VT: *Id.*

³⁷ VA: See P.D. 92-136.

State ¹	Distribute promotional materials ²	Electronic promotional materials ³	Solicit sales in person ⁴	Solicit sales by telephone ⁵	Demonstrate product in person ⁶
Washington	Yes ³⁸	No ³⁹	Yes	No ⁴⁰	Yes
West Virginia	No	No	Yes	No	No
Wisconsin	Yes ⁴¹	Depends ⁴²	Yes	Yes ⁴³	Yes
Wyoming ⁴⁴	No ⁴⁵	No ⁴⁶	Yes	Yes ⁴⁷	Yes

³⁸ WA: Assumes the third party solicitor is not located in or conducting such activities in this state.

³⁹ WA: *Id.*

⁴⁰ WA: *Id.*

⁴¹ WI: Please refer to sec. 77.51(13g)(b), Wis. Stats. (**2015-16**), and sec. 77.51(13g)(d), Wis. Stats. (**2015-16**).

⁴² WI: *Id.*

⁴³ WI: Yes, if the third party is located in Wisconsin. Please refer to sec. 77.51(13g)(b), Wis. Stats. (**2015-16**), and sec. 77.51(13g)(d), Wis. Stats. (**2015-16**).

⁴⁴ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

⁴⁵ WY: Advertising alone is not sufficient to establish nexus.

⁴⁶ WY: *Id.*

⁴⁷ WY: Yes, if the call center is in our state.

Nexus-Creating Activities: Sales and Use Tax — Third-Party Solicitation Activities and Attributional Nexus (Part 2 of 2)

State ¹	Negotiate prices to buy ²	Negotiate prices to sell ³	Refer via Internet click through ⁴	Advertise product on in-state website ⁵	Post info. on in-state website ⁶	Search engine optimization techniques ⁷
Alabama	No Response ⁸	No Response ⁹	Yes	No	No	No
Arizona ¹⁰	Yes	Yes	No ¹¹	No ¹²	No ¹³	No ¹⁴
Arkansas	Yes	Yes	No	No	No	No
California	No	Yes ¹⁵	No ¹⁶	No	No ¹⁷	No
Colorado	Yes	Yes	Yes	No	No	No
Connecticut	No Response ¹⁸	No Response ¹⁹	No Response ²⁰	No Response ²¹	No Response ²²	No Response ²³
District of Columbia	Yes	Yes	No	No	No	No
Florida ²⁴	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	Yes	Depends ²⁵	No	No	No
Hawaii	Yes	Yes	No	No	No	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The corporation makes remote sales into your state and hires a third party to negotiate prices to buy.

³ The corporation makes remote sales into your state and hires a third party to negotiate prices to sell.

⁴ The corporation makes remote sales into your state and hires a third party to refer a customer via website or blog click through in exchange for a percentage of the sale.

⁵ The corporation makes remote sales into your state and hires a third party to advertise a product on an in-state website or blog, but with no click through to buy.

⁶ The corporation makes remote sales into your state and hires a third party to post informational content on in-state websites or blogs.

⁷ The corporation makes remote sales into your state and hires a third party to employ "search engine optimization" techniques, such as generating targeted advertisements based on specific searches.

⁸ AL: If the 3rd party is in Alabama it would create nexus. We do not feel there is enough information to accurately answer this question.

⁹ AL: *Id.*

¹⁰ AZ: Answers assume the third party is engaged in the listed activities within the state.

¹¹ AZ: Answer assumes delivery of remote sales is made by U.S. mail or common carrier and not by the corporation or its employees or agents. Substantial nexus may be created if the listed activity is significantly associated with the corporation's ability to establish and maintain a business market in Arizona.

¹² AZ: *Id.*

¹³ AZ: *Id.*

¹⁴ AZ: *Id.*

¹⁵ CA: This assumes the third party is performing the services in-state.

¹⁶ CA: This assumes that the third party is not located in this state and/or that the retailer does not derive at least \$10,000 in sales clicked to in by in-state persons in the preceding 12 months or that the retailer does not have at least \$1,000,000 in total sales to purchasers in this state for the preceding 12 months. (See Section 6203(c)(5)).

¹⁷ CA: This assumes that the third party is not located in this state.

¹⁸ CT: DRS has no published position.

¹⁹ CT: *Id.*

²⁰ CT: See Conn. Gen. Stat. §12-407(a)(12)(L).

²¹ CT: DRS has no published position.

²² CT: *Id.*

²³ CT: *Id.*

²⁴ FL: Nexus is considered on a case-by-case basis.

²⁵ GA: If the referrals from in-state sources exceed \$50,000 during a 12-month period and the referral source receives a commission based on completed sales, the remote seller is a "dealer" and must collect tax on all sales into the state.

State ¹	Negotiate prices to buy ²	Negotiate prices to sell ³	Refer via Internet click through ⁴	Advertise product on in-state website ⁵	Post info. on in-state website ⁶	Search engine optimization techniques ⁷
Idaho	Yes ²⁶	Yes ²⁷	No ²⁸	No ²⁹	No ³⁰	No ³¹
Illinois ³²	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	No	No	No
Kansas	Yes ³³	Yes ³⁴	Yes	No	No	No
Kentucky	No ³⁵	No ³⁶	No	No	No	No
Louisiana	No	Yes	Yes	No	No	No
Maine	Yes ³⁷	Yes ³⁸	Yes ³⁹	No	No	No
Maryland	No ⁴⁰	No ⁴¹	No	No	No	No
Massachusetts	No	No	No	No	No	No
Michigan	No ⁴²	No ⁴³	Yes ⁴⁴	No	No ⁴⁵	No ⁴⁶
Minnesota	No Response ⁴⁷	No Response ⁴⁸	No Response ⁴⁹	No	No	No
Mississippi	No	Yes ⁵⁰	No ⁵¹	No	No	No
Missouri	Yes	Yes	Yes	Yes	Yes	No
Nebraska	Yes	Yes	No	No	No	No
Nevada	No	Yes	Yes	No	No	No
New Jersey	No	Yes	No ⁵²	No	No	No
New Mexico	Yes	Yes	No	No	No	No

²⁶ ID: From in-state.

²⁷ ID: *Id.*

²⁸ ID: Thus far, we have not challenged taxpayers whose sole connection to the state is from a remote web server or site.

²⁹ ID: *Id.*

³⁰ ID: *Id.*

³¹ ID: *Id.*

³² IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

³³ KS: If the third party is located in Kansas.

³⁴ KS: *Id.*

³⁵ KY: Depends upon additional facts and circumstances.

³⁶ KY: *Id.*

³⁷ ME: Provided 3rd party is located in Maine.

³⁸ ME: *Id.*

³⁹ ME: Possibly; see 36 MRSA section 1754-B, subsection 1-A, Paragraph C.

⁴⁰ **MD: No, if person is not in Maryland.**

⁴¹ **MD: No, if person is not located in Maryland.**

⁴² MI: Assumes the third party is not physically present in Michigan.

⁴³ MI: *Id.*

⁴⁴ MI: See MCL 205.52b and 205.95a.

⁴⁵ MI: Assumes the third party is not physically present in Michigan.

⁴⁶ MI: *Id.*

⁴⁷ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

⁴⁸ MN: *Id.*

⁴⁹ MN: If sales are more than \$10,000 per year.

⁵⁰ MS: If in person.

⁵¹ MS: No, unless seller is a selling agent of the referring party who is located in-state.

⁵² NJ: Answer assumes the factors in N.J.S.A. 54:32B-2(i)(1)(C) have not been met.

State ¹	Negotiate prices to buy ²	Negotiate prices to sell ³	Refer via Internet click through ⁴	Advertise product on in-state website ⁵	Post info. on in-state website ⁶	Search engine optimization techniques ⁷
New York	Depends ⁵³	Depends ⁵⁴	No Response ⁵⁵	No	No	No
North Carolina	No	Yes	Yes	No	No	No
North Dakota	Yes	Yes	Depends ⁵⁶	Yes	Yes	Depends ⁵⁷
Pennsylvania	Yes	Yes	Yes	No	No	No
Rhode Island	Yes	Yes	Yes	No	No	No
South Dakota	Yes	Yes	Yes ⁵⁸	No	No	No
Tennessee	No	Yes ⁵⁹	Yes⁶⁰	No	No	No
Texas	No	Yes ⁶¹	No	No	No	No
Utah	No	No	No	No	No	No
Vermont	No Response	No Response	No Response	No ⁶²	No ⁶³	No ⁶⁴
Virginia	No	No	No	No	No	No
Washington ⁶⁵	No	Yes	Yes	No	No	No
West Virginia	Yes	Yes	No	No	No	No
Wisconsin	Yes ⁶⁶	Yes ⁶⁷	No	No	No	No
Wyoming ⁶⁸	No	Yes ⁶⁹	No	No	No	No

⁵³ NY: Depends if third party is present in NYS when conducting these activities.

⁵⁴ NY: *Id.*

⁵⁵ NY: For information on this, see TSB-M-08(3)S, New Presumption Applicable to the Definition of Sales Tax Vendor, and TSB-M-08(3.1)S, Additional Information on How Sellers May Rebut the New Presumption Applicable to the Definition of Sales Tax Vendor as Described in TSB-M-08(3)S.

⁵⁶ ND: Yes/No. Server must be in North Dakota.

⁵⁷ ND: *Id.*

⁵⁸ SD: Is an area that South Dakota will push for nexus.

⁵⁹ TN: Answer assumes that the price negotiation takes place in Tennessee.

⁶⁰ **TN: Answer assumes conditions found in Tenn. Code Ann. 67-6-520 are met.**

⁶¹ TX: Yes, if in person.

⁶² VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁶³ VT: *Id.*

⁶⁴ VT: *Id.*

⁶⁵ WA: Assumes the third party solicitor is not located in or conducting such activities in this state.

⁶⁶ WI: Yes, if the third party is located in Wisconsin.

⁶⁷ WI: *Id.*

⁶⁸ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

⁶⁹ WY: Yes, if the solicitor is located in our state, either permanently or temporarily.

Nexus-Creating Activities: Sales and Use Tax — Transactions Involving Franchise Agreements

State ¹	Owns only intangible property ²	One inspection visit ³	2 to 6 inspection visits ⁴	More than 6 inspection visits ⁵	Leases equipment worth \$20,000 ⁶	Leases equipment worth \$100,000 ⁷	Repairs equipment in state ⁸
Alabama	No	Yes	Yes	Yes	Yes	Yes	Yes
Arizona ⁹	No ¹⁰	No ¹¹	Yes	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes
California ¹²	No	No	No	No	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Connecticut ¹³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹⁴	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	Yes	Yes	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Idaho	No Response ¹⁵	No Response ¹⁶	No Response ¹⁷	No Response ¹⁸	Yes	Yes	Yes
Illinois ¹⁹	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Yes	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation owns only intangible property such as trademarks in your state.

³ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation makes one inspection visit to the franchisee's location per year.

⁴ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation makes two to six inspection visits to the franchisee's location per year.

⁵ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation makes more than six inspection visits to the franchisee's location per year.

⁶ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation leases machinery and equipment worth \$20,000 to the franchisee.

⁷ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation leases machinery and equipment worth \$100,000 to the franchisee.

⁸ The out-of-state corporation licenses intangible property to an in-state franchisee and the corporation maintains and repairs the franchisee's equipment in your state.

⁹ AZ: Answers assume that "intangible property" refers to such property as trademarks, brand names, business processes and goodwill, and not to prewritten software and other similar digital goods that Arizona considers tangible personal property.

¹⁰ AZ: Answer assumes the corporation (or its affiliates) is not making retail sales, leases or rentals of tangible personal property, or otherwise engaging in taxable business activity in the state.

¹¹ AZ: *Id.*

¹² CA: The answers assume the in-state franchisee does not engage in any selling activity on behalf of the corporation.

¹³ CT: DRS has no published position.

¹⁴ FL: Nexus is considered on a case-by-case basis.

¹⁵ ID: The Tax Commission has made no ruling on this fact situation.

¹⁶ ID: *Id.*

¹⁷ ID: *Id.*

¹⁸ ID: *Id.*

¹⁹ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Owns only intangible property ²	One inspection visit ³	2 to 6 inspection visits ⁴	More than 6 inspection visits ⁵	Leases equipment worth \$20,000 ⁶	Leases equipment worth \$100,000 ⁷	Repairs equipment in state ⁸
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kentucky	No ²⁰	No ²¹	No ²²	No ²³	Yes ²⁴	Yes ²⁵	Yes
Louisiana	No	Yes	Yes	Yes	Yes	Yes	Yes
Maine	Yes ²⁶	Yes ²⁷	Yes ²⁸	Yes ²⁹	Yes	Yes	Yes
Maryland	No	No	No	No	No	No	Yes
Massachusetts	No	Depends	Yes	Yes	Yes	Yes	Yes
Michigan	Yes ³⁰	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	No	No Response ³¹	No Response ³²	Yes	Yes	Yes	Yes
Mississippi ³³	No	No	No	No	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	No	No	No	No	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	No	No	No	No	Yes ³⁴	Yes ³⁵	Yes ³⁶
North Carolina	No	No	No	No	Yes	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes	Yes ³⁷	Yes ³⁸	Yes
Tennessee	No	No ³⁹	No ⁴⁰	No ⁴¹	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes	Yes	Yes	Yes

²⁰ KY: May change depending upon type or meaning of intangible property.

²¹ KY: Depends upon other facts and circumstances.

²² KY: *Id.*

²³ KY: *Id.*

²⁴ KY: **Depends upon facts and circumstances of the transaction.**

²⁵ KY: *Id.*

²⁶ ME: Possibly; see 36 MRSA section 1754-B, subsection 1-A, paragraph (B).

²⁷ ME: *Id.*

²⁸ ME: *Id.*

²⁹ ME: *Id.*

³⁰ MI: See MCL 205.52b and 205.95a.

³¹ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

³² MN: *Id.*

³³ MS: Leases of tangible personal property in Mississippi in any amount would create nexus.

³⁴ NY: See Tax Law Section 1101(b)(8)(F) and Regulations Section 526.10(a)(7).

³⁵ NY: *Id.*

³⁶ NY: *Id.*

³⁷ SD: If the franchisee retains any ownership in the product, then nexus would be created.

³⁸ SD: *Id.*

³⁹ TN: It is likely that the franchisor will have other transactions with the franchisee that will create Tennessee sales tax nexus for the franchisor.

⁴⁰ TN: *Id.*

⁴¹ TN: *Id.*

State ¹	Owns only intangible property ²	One inspection visit ³	2 to 6 inspection visits ⁴	More than 6 inspection visits ⁵	Leases equipment worth \$20,000 ⁶	Leases equipment worth \$100,000 ⁷	Repairs equipment in state ⁸
Utah	No	No	No	No	Yes	Yes	Yes
Vermont	No ⁴²	No ⁴³	No ⁴⁴	No ⁴⁵	No Response	No Response	No Response
Virginia ⁴⁶	Depends	Depends	Depends	Depends	Depends	Depends	Depends
Washington	No	Yes	Yes	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wisconsin	No	Yes	Yes	Yes	Yes	Yes	Yes
Wyoming ⁴⁷	No	No	No	No	Yes	Yes	Yes

⁴² VT: The condition described for this question, by itself, is not sufficient for determining nexus. However, the totality of circumstances may lead to a determination of nexus.

⁴³ VT: *Id.*

⁴⁴ VT: *Id.*

⁴⁵ VT: *Id.*

⁴⁶ VA: If the franchisee or licensee is operating under the same trade name in Virginia as the franchisor or licensor and the parties have an agency relationship, this may be sufficient to confer nexus on the out-of-state franchisor/licensor pursuant to Va. Code §58.1-612(c)(8).

⁴⁷ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

Nexus-Creating Activities: Sales and Use Tax — Service Providers

State ¹	Repairs TPP and delivers it by common carrier ²	Provides taxable service in which no part is physically transferred ³	Provides taxable service in which TPP is physically transferred ⁴	Transfers documents by electronic means ⁵	Employees regularly enter state to deliver TPP ⁶	Employees occasionally enter state to deliver TPP ⁷	Stores TPP with third party in state ⁸
Alabama	Not Applicable ⁹	No ¹⁰	Yes ¹¹	No ¹²	Yes ¹³	Yes ¹⁴	Yes ¹⁵

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2015.

OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation repairs tangible personal property in another state and delivers it by common carrier to an in-state customer (assume the repair services are taxable in your state).

³ The out-of-state corporation provides a taxable service to an in-state customer in which no part of the service, including the tangible personal property that is incidental to the performance of the taxable service, is physically transferred to the in-state customer.

⁴ The out-of-state corporation provides a taxable service to an in-state customer in which tangible personal property that is incidental to the performance of the service is physically transferred (i.e., by common carrier) to the in-state customer.

⁵ The out-of-state corporation transfers to an in-state customer, only by electronic means, documents that are incidental to the performance of a taxable service.

⁶ The out-of-state corporation has employees that regularly (e.g., 12 or more times per year) enter the state to deliver to in-state customers tangible personal property that is incidental to the performance of a taxable service.

⁷ The out-of-state corporation has employees occasionally (e.g., less than 12 times per year) enter the state to deliver to an in-state customer tangible personal property that is incidental to the performance of a taxable service.

⁸ The out-of-state corporation stores tangible personal property with a third party in the state that is transferred to in-state customers as an incidental part of the performance of a taxable service.

⁹ AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Delivery by a common carrier into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama). See Departmental Rule 810-6-5-.04.02(5) (a), Example 2. Please note that the scenario as stated in this question assumes that repair services are taxable in Alabama. Labor or service charges are taxable if the labor or service is incidental to making, producing, or fabricating a new or different item of tangible personal property or otherwise preparing the tangible personal property for sale and is performed prior to transfer of title to the purchaser. It does not matter whether the labor or service charge is included in the total charge for the product or is billed as a separate item (see Departmental Rule 810-6-1-.84). Repair charges are not subject to sales or use tax per Departmental Rule 810-6-1-.84 as follows: "Labor or service charges are not taxable when billed for labor or services expended in repairing or altering existing tangible personal property belonging to another in order to restore the property to its original condition or usefulness without producing new parts. When repair work includes the sale of repair parts in conjunction with repairs to existing tangible personal property belonging to another, only the sales price of the repair parts is taxable provided the charges for the repair parts and the charges for the repair labor or repair services are billed separately on the invoice to the customer. If the repairman fabricates repair parts which are used in conjunction with repairs to existing tangible personal property belonging to another, the total charge for the parts, including any labor or service charges incurred in making, producing, or fabricating the parts, is taxable even if the fabrication labor or service charges are billed to the customer as a separate item."

¹⁰ AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes. Also, please note that sales tax is levied on the retail sale of tangible personal property (see Code of Alabama 1975, Section 40-23-2). Services in general are not subject to sales tax. However, if the property is physically located here, the transaction would create nexus.

¹¹ AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Delivery by a common carrier into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama).

¹² AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including delivery into Alabama by means of a vehicle owned by the seller. Electronic means of delivery into Alabama would not create substantial nexus requiring a seller to collect sales tax on retail sales of tangible personal property (assuming the seller has not established some other form of nexus in Alabama).

¹³ AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including employing or retaining under contract any representative, agent, salesman, canvasser, solicitor or installer operating in Alabama for the purpose of selling, delivering, taking orders, etc. A seller who employs agents in Alabama for the purpose of selling, delivering, or the taking of orders has established contact with this state that would allow this state to require the seller to collect sales tax on retail sales of tangible personal property.

¹⁴ AL: *Id.*

¹⁵ AL: Departmental Rule 810-6-2-.90.01 addresses several situations that would create substantial nexus requiring the seller to remit State and Local sales or use taxes, including maintaining directly or indirectly a storage place or warehouse. Inventory stored with a third party would create substantial nexus for an out-of-state company to collect sales tax on retail sales of tangible personal property.

State ¹	Repairs TPP and delivers it by common carrier ²	Provides taxable service in which no part is physically transferred ³	Provides taxable service in which TPP is physically transferred ⁴	Transfers documents by electronic means ⁵	Employees regularly enter state to deliver TPP ⁶	Employees occasionally enter state to deliver TPP ⁷	Stores TPP with third party in state ⁸
Arizona	Yes	Yes	No ¹⁶	No ¹⁷	Yes	Yes	Yes
Arkansas ¹⁸	No	No ¹⁹	No ²⁰	No	No	No	Yes
California	No	No	No	No	Yes ²¹	Yes ²²	Yes
Colorado	No	Yes ²³	Yes ²⁴	Yes ²⁵	Yes ²⁶	Yes ²⁷	Yes ²⁸
Connecticut	No Response ²⁹	No Response ³⁰	No Response ³¹	No Response ³²	No Response ³³	No Response ³⁴	No Response ³⁵
District of Columbia	No	No	Yes ³⁶	Yes	Yes	Yes	Yes
Florida ³⁷	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Georgia	No	No	No ³⁸	No	Yes	Depends ³⁹	Yes
Hawaii	No	No	No	No	Yes	Yes	Yes
Idaho	No	No Response ⁴⁰	No Response ⁴¹	No	Yes	Yes	No Response ⁴²
Illinois ⁴³	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	Not Applicable	Not Applicable	Not Applicable	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	Yes	Yes	Yes

¹⁶ AZ: Answer assumes the listed activity does not involve a lease or rental and does not occur frequently. Substantial nexus may be created if the listed activity involves a lease or rental, or if the listed activity is significantly associated with the corporation's ability to establish and maintain a business market in Arizona.

¹⁷ AZ: *Id.*

¹⁸ AR: See Ark. Code Ann. §§26-5-101; 26-53-106; 26-53-107; 26-53-131, Arkansas UT-12.

¹⁹ AR: The answer assumes the repair is provided solely outside the state.

²⁰ AR: *Id.*

²¹ CA: This assumes that the in-state activity helps the corporation establish or maintain a California market for sales of tangible personal property.

²² CA: *Id.*

²³ CO: Because all taxable services have a nexus with the state. If part of the transaction were unbundled and provided by another corporation, (*e.g.*, utilities billing were performed and charged for by another), the other service providing entities would establish nexus on behalf of the non-nexus provider.

²⁴ CO: *Id.*

²⁵ CO: *Id.*

²⁶ CO: *Id.*

²⁷ CO: *Id.*

²⁸ CO: *Id.*

²⁹ CT: DRS has no published position.

³⁰ CT: *Id.*

³¹ CT: *Id.*

³² CT: *Id.*

³³ CT: *Id.*

³⁴ CT: *Id.*

³⁵ CT: See Conn. Gen. Stat. §12-407(a)(15)(C) regarding nexus in connection with fulfillment services.

³⁶ DC: This answer depends. If tangible property has been delivered via common carrier service to the District of Columbia and the company's service is related to the product that is being delivered, then it would be a taxable service as well as tax on the tpp delivered.

³⁷ FL: Service is considered on a case-by-case basis.

³⁸ GA: As long as the property is shipped from out of state by common carrier to customer in state, no nexus.

³⁹ GA: The facts of each situation must be considered.

⁴⁰ ID: Does not have sufficient facts to provide an answer.

⁴¹ ID: *Id.*

⁴² ID: *Id.*

⁴³ IL: The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. For your general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Repairs TPP and delivers it by common carrier ²	Provides taxable service in which no part is physically transferred ³	Provides taxable service in which TPP is physically transferred ⁴	Transfers documents by electronic means ⁵	Employees regularly enter state to deliver TPP ⁶	Employees occasionally enter state to deliver TPP ⁷	Stores TPP with third party in state ⁸
Kansas	No	No	No	No	Yes	Yes	Yes
Kentucky	Not Applicable	Yes	Yes	Yes	Yes	Yes	Yes
Louisiana	No	No	No	No	Yes	Yes	No
Maine	No	No	No	No	Yes	Yes ⁴⁴	Yes ⁴⁵
Maryland	No	No	No	No	Yes	Yes	Yes
Massachusetts	No	Yes	Yes	No	Yes	Yes	Yes
Michigan	No	No	No	No	Yes	Yes	Yes
Minnesota	No	No	No	No	Yes	No Response ⁴⁶	Yes
Mississippi	Yes ⁴⁷	No	Yes	No	Yes	Yes	No
Missouri	No	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	No	No	No	No	Yes	Yes	Yes
Nevada	No	No	No	No	Yes	Yes	Yes
New Jersey	No	No	No ⁴⁸	No ⁴⁹	Yes	Yes	Yes
New Mexico	No	No	No	Yes	Yes	Yes	Yes
New York	No	No	No	No	Yes	Yes	Yes
North Carolina	No	Yes ⁵⁰	Yes	Yes	Yes	Yes	Yes
North Dakota	No	No	No	No	Yes	Yes	Yes
Pennsylvania	No	No	No	No	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes	Yes	Yes	Yes
South Dakota	No	No	No	No	Yes	Yes	Yes
Tennessee	No	No ⁵¹	No	No	Yes	Yes	Yes
Texas	No ⁵²	No ⁵³	No ⁵⁴	No ⁵⁵	Yes	Yes	Yes
Utah	No	No	No	No	Yes	Yes	Yes
Vermont ⁵⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia ⁵⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

⁴⁴ ME: Possibly; depends on the facts.

⁴⁵ ME: *Id.*

⁴⁶ MN: If they are doing business in the state on more than 3 days per 12 month period nexus is created.

⁴⁷ MS: If the out-of-state corporation has Mississippi nexus, sales tax due on entire transaction. No nexus would mean the customer would owe use tax on the parts only portion of repair.

⁴⁸ NJ: The answer presumes a taxable service is performed out-of-State.

⁴⁹ NJ: *Id.*

⁵⁰ NC: Depends on if the service is provided in the state.

⁵¹ TN: It is unclear from the question how a service can be “physically transferred.”

⁵² TX: Assumes corporation is not otherwise engaged in business as defined in Texas Tax Code Section 151.107.

⁵³ TX: *Id.*

⁵⁴ TX: *Id.*

⁵⁵ TX: *Id.*

⁵⁶ VT: Services are not subject to Vermont’s sales and use tax. Tangible personal property that is merely incidental to a personal service is not taxable. See 32 V.S.A. §9741(35).

⁵⁷ VA: Generally, services are not subject to tax in Virginia.

State ¹	Repairs TPP and delivers it by common carrier ²	Provides taxable service in which no part is physically transferred ³	Provides taxable service in which TPP is physically transferred ⁴	Transfers documents by electronic means ⁵	Employees regularly enter state to deliver TPP ⁶	Employees occasionally enter state to deliver TPP ⁷	Stores TPP with third party in state ⁸
Washington	No	No ⁵⁸	No ⁵⁹	No ⁶⁰	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes	No	Yes	Yes	Yes
Wisconsin	No	Depends	Depends	No	Yes	Yes	Yes
Wyoming ⁶¹	No ⁶²	No	No	No	Yes ⁶³	Yes ⁶⁴	Yes ⁶⁵

⁵⁸ WA: Assumes taxable service is performed outside WA.

⁵⁹ WA: *Id.*

⁶⁰ WA: *Id.*

⁶¹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in our state is enough to establish nexus.

⁶² WY: As adopted from SSTA's terms "receive" and "receipt" and "making first use of services." With regard to services the location where the customer receives the serviced property or is able to make first use of the property, whichever occurs first, is the jurisdiction accepting the sales tax. (See W.S. 39-15-104(f)(i).)

⁶³ WY: Employees providing taxable service in this state creates nexus.

⁶⁴ WY: *Id.*

⁶⁵ WY: Storing inventory in the state is a nexus-creating activity.

Nexus-Creating Activities: Sales and Use Tax — Cloud Computing (Part 1 of 2)

State ¹	Fees charged for right to access software hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Alabama ⁸	Not Applicable ⁹	Not Applicable ¹⁰	Not Applicable ¹¹	Not Applicable ¹²	Not Applicable ¹³	Not Applicable ¹⁴
Arizona	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas ¹⁵	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
California ¹⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Colorado	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

³ The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and remotely performs a taxable service in your state.

⁴ The out-of-state corporation sends an employee to your state to perform an initial setup and then charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

⁵ The out-of-state corporation hires an independent contractor in your state to provide training to in-state customers and charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state.

⁶ The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and occasionally (e.g., one to 11 times per year) has employees meet with customers in your state.

⁷ The out-of-state corporation charges fees to in-state customers for the right to access *non-downloadable prewritten software* that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.

⁸ AL: Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term "canned computer software" in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

⁹ AL: If, in the scenario presented, customers would simply access software on remotely located servers, rather than installing or downloading the software to computer hardware and would not have the ability to manipulate the software code, access to the software would be considered a web-based service and does not fall within the definition of a taxable sale of "canned" computer software as described in Sales and Use Tax Rule 810-6-1-.37.

¹⁰ AL: If, in the scenario presented, customers would simply access software on remotely located servers, rather than installing or downloading the software to computer hardware and would not have the ability to manipulate the software code, access to the software would be considered a web-based service and does not fall within the definition of a taxable sale of "canned" computer software as described in Sales and Use Tax Rule 810-6-1-.37. Also, please remember that sales tax is levied on the retail sale of tangible personal property (see Code of Alabama 1975, Section 40-23-2). Services in general are not subject to sales tax. The situation in this question does not involve a sale of tangible personal property.

¹¹ AL: A fee for customers to simply access software on remotely located servers (software is not installed or downloaded to computer hardware) is considered a web-based service and does not fall within the definition of a taxable sale of "canned" computer software as described in Sales and Use Tax Rule 810-6-1-.37. Please note that in this scenario, the fee charged for the service is not a sale of tangible personal property subject to sales tax. Departmental Rule 810-6-2-.90.01, states that employing or retaining under contract any representative, agent, salesman, canvasser, solicitor or installer operating in Alabama for the purpose of selling, delivering, taking orders, etc. creates substantial nexus requiring the seller to remit state and local sales or use taxes on sales of tangible personal property.

¹² AL: *Id.*

¹³ AL: *Id.*

¹⁴ AL: *Id.*

¹⁵ AR: See Ark. Code Ann. §§26-52-301; 26-52-304, Arkansas GR-25(H).

¹⁶ CA: Charges to access remote software or information on a website are not subject to tax.

State ¹	Fees charged for right to access software hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Connecticut ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Not Applicable	No	Yes	Yes	Yes	Yes
Florida ¹⁸	No Response	No Response	No Response	No Response	No Response	No Response
Georgia ¹⁹	Not Applicable	Depends	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho ²⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Illinois ²¹	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	Yes	No	Yes	Yes
Iowa ²²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	No	No	Yes	Yes	Yes	Yes
Kentucky ²³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ²⁴	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Not Applicable ²⁵	Not Applicable	Not Applicable ²⁶	Not Applicable ²⁷	Not Applicable ²⁸	Not Applicable
Maryland	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	Depends ²⁹	Depends ³⁰	Yes	Depends ³¹	Depends ³²	Depends ³³

¹⁷ CT: DRS has no published position.

¹⁸ FL: Nexus is considered on a case-by-case basis.

¹⁹ GA: We have not opined on nexus because of the instruction to answer “Not Applicable” if the charges are not taxable in our state.

²⁰ ID: Though agents or employees in the state may create nexus, note that sales of remotely accessed software or charges for access to online information are not taxable in Idaho. Thus, if the business only makes these types of sales into Idaho, the nexus question is irrelevant as it pertains to sales tax.

²¹ **IL: Currently, computer software provided through a cloud-based delivery system — a system in which computer software is never downloaded onto a client’s computer and is only accessed remotely — is not subject to tax. The Department continues to review cloud-based arrangements. If, after review, the Department determines that these transactions are subject to tax, it will only apply this determination prospectively. A provider of software as a service is acting as a serviceman. If the provider does not transfer any tangible personal property to the customer then the transaction generally would not be subject to Retailer’s Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax. If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider’s network and services, it appears the subscriber is receiving the computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software. If the provider is not otherwise required to be registered under Section 2a of the Retailer’s Occupation Tax Act and qualifies as a de minimis serviceman, the provider could elect to pay Use Tax on its cost price of the computer software. See Ill. Dept. of Rev., Illinois General Information Letter ST 17-0007-GIL (March 2, 2017).**

²² **IA: The fees in this section are not taxable in Iowa.**

²³ KY: Access to nondownloadable prewritten software and access to information on a website are not taxable.

²⁴ LA: The Department has no position at this time.

²⁵ ME: The fees are not taxable in Maine.

²⁶ ME: The fees are not taxable in Maine; however, the out-of-state corporation may have nexus in Maine, depending on the facts and the number of occurrences.

²⁷ ME: *Id.*

²⁸ ME: *Id.*

²⁹ MA: Depends on the facts.

³⁰ MA: Depends on the service.

³¹ MA: Depends on the facts.

³² MA: *Id.*

³³ MA: *Id.*

State ¹	Fees charged for right to access software hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Michigan	Not Applicable ³⁴	Not Applicable ³⁵	Not Applicable ³⁶	Not Applicable ³⁷	Not Applicable ³⁸	Not Applicable ³⁹
Minnesota	No	No	No Response ⁴⁰	No Response ⁴¹	No Response ⁴²	Yes
Mississippi	No	No	Yes	Yes	Yes	Yes
Missouri	Not Applicable	Yes	Yes	Yes	Yes	Yes
Nebraska ⁴³	Not Applicable	Not Applicable	Yes	Not Applicable	Not Applicable	Not Applicable
Nevada ⁴⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Jersey ⁴⁵	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	No	Yes	Yes	Yes	Yes	Yes
New York	No	No	Yes	Yes	Yes	Yes
North Carolina ⁴⁶	Not Applicable	Not Applicable	Not Applicable ⁴⁷	Not Applicable ⁴⁸	Not Applicable ⁴⁹	Not Applicable ⁵⁰
North Dakota ⁵¹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	No	No	Yes	Yes	Yes	Yes
Rhode Island ⁵²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
South Dakota	No	No	Yes	Yes	Yes	Yes
Tennessee ⁵³	Yes	Yes	Yes	Yes	Yes	Yes
Texas	No	No	Yes	Yes	Yes	Yes

³⁴ MI: Fees are not taxable and the activity does not create nexus.

³⁵ MI: *Id.*

³⁶ MI: Fees are not taxable and the activity creates nexus.

³⁷ MI: *Id.*

³⁸ MI: *Id.*

³⁹ MI: *Id.*

⁴⁰ MN: If they are doing business in the state on more than 3 days per 12 month period.

⁴¹ MN: *Id.*

⁴² MN: If more than 3 times in a 12 month period.

⁴³ NE: These fees are not taxable in Nebraska. Some of these activities may nevertheless be nexus creating.

⁴⁴ **NV: These fees are not taxable in this State.**

⁴⁵ NJ: Fees to access software and training are not taxable. Nexus is created if taxpayer has a place of business in New Jersey, has employees working in this State (e.g., technicians, instructors, delivery persons, independent representatives, solicitors), or owns any business property here. Charges for installation and maintenance of tangible personal property are subject to tax. See N.J.S.A. 54:32B-3(b)(2).

⁴⁶ NC: Charges for "cloud computing" involving a person using online/web-hosted versions of prewritten software located on servers where the prewritten software is not downloaded, but is instead accessed electronically via the internet website, is not subject to NC sales & use tax.

⁴⁷ NC: Activities performed in the State by employees or by a third party on behalf of the out-of-state corporation create nexus in the State, although many of the transactions are not subject to sales tax.

⁴⁸ NC: *Id.*

⁴⁹ NC: *Id.*

⁵⁰ NC: *Id.*

⁵¹ ND: These fees are not taxable in our state.

⁵² RI: When a vendor charges a fee to access information on its website or hosts software from their server which may be accessed by a customer, the transaction is not considered prewritten software delivered electronically and is not subject to tax. Tax is due if the prewritten computer software is downloaded.

⁵³ **TN: Effective July 1, 2016, out-of-state dealers who engage in regular or systematic solicitation of consumers in this state through any means and make sales that exceed \$500,000 to consumers in this state during the previous 12-month period also have substantial nexus with this state. See Tenn. Reg. & R. 1320-05-01-.129.**

State ¹	Fees charged for right to access software hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ⁵⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia ⁵⁵	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Washington	No	No	Yes	Yes	Yes	Yes
West Virginia	No	No	No	Yes	No	No
Wisconsin	Not Applicable ⁵⁶	No	Not Applicable ⁵⁷	Not Applicable ⁵⁸	Not Applicable ⁵⁹	Not Applicable ⁶⁰
Wyoming ⁶¹	Not Applicable ⁶²	Not Applicable ⁶³	Yes ⁶⁴	Not Applicable ⁶⁵	Not Applicable ⁶⁶	Not Applicable ⁶⁷

⁵⁴ VT: Under 2015 Vt. Laws No. 51 (S.138), §G.8, charges for the right to access prewritten software remotely are not considered charges for tangible personal property under 32 §9701(7).

⁵⁵ VA: The Department of Taxation has ruled cloud computing services are not taxable. (See PD 12-215; PD 12-191).

⁵⁶ WI: This assumes the charges are for accessing prewritten computer software located on the vendor's server, and the customer does not operate the vendor's server, or control its operation and does not have physical access to the vendor's server. This also assumes the service provider is not providing a taxable service (for example, a telecommunications message service) in the transaction.

⁵⁷ WI: *Id.*

⁵⁸ WI: *Id.*

⁵⁹ WI: *Id.*

⁶⁰ WI: *Id.*

⁶¹ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁶² WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

⁶³ WY: *Id.*

⁶⁴ WY: Wyoming imposes sales tax on services which repair, alter, or improve computer hardware, computer software, or canned software; therefore, employees in our state that are involved in taxable services create nexus.

⁶⁵ WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property. Wyoming has no statutory provisions to impose sales tax on the professional services of a trainer/instructor. However, if course materials, manuals, etc., are separately sold from any training activities, they are subject to sales tax. Employees in our state making taxable sales create nexus.

⁶⁶ WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

⁶⁷ WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Cloud Computing (Part 2 of 2)

State ¹	Fees charged for right to access information on website hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Alabama ⁸	Not Applicable ⁹	Not Applicable ¹⁰	Yes ¹¹	Yes ¹²	Yes ¹³	Yes ¹⁴
Arizona	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas ¹⁵	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
California ¹⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Colorado	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Connecticut ¹⁷	No Response	No Response	No Response	No Response	No Response	No Response
District of Columbia	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

³ The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and remotely performs a taxable service in your state.

⁴ The out-of-state corporation sends an employee in your state to perform an initial set up and then charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

⁵ The out-of-state corporation hires an independent contractor in your state to provide training to in-state customers for the right to access *information on its website* that is hosted on a server in another state.

⁶ The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and occasionally (e.g., less than 12 times per year) has employees meet with customers in your state.

⁷ The out-of-state corporation charges fees to in-state customers for the right to access *information on its website* that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.

⁸ AL: The response to this question depends on whether this transaction of "accessing information" involves a web-based service (for example, accessing prewritten software that is not downloaded, licensed, or stored by the user) or a sale of tangible personal property delivered by electronic means (for example, a sale of a downloadable magazine). Alabama Sales and Use Tax Rule 810-6-1-.37, Computer Hardware and Software, explains that the sale, rental, or licensing of canned computer software is considered a retail sale and is therefore subject to sales, use, or rental tax. The use of the term "canned computer software" in this rule means software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission. A fee for customers to simply access software on remotely located servers (nothing is installed or downloaded to computer hardware) is considered a web-based service and does not fall within the definition of a taxable sale of "canned" computer software as described in Sales and Use Tax Rule 810-6-1-.37.

⁹ AL: If this is a sale of tangible personal property, the out-of-state corporation has not established sufficient nexus for sales tax purposes, as it does not have a physical presence as described in Departmental Rule 810-6-2-.90.01.

¹⁰ AL: *Id.*

¹¹ AL: If this is a sale of tangible personal property, the out-of-state corporation has established sufficient nexus for sales tax purposes by employing under contract an agent in this state per described in Departmental Rule 810-6-2-.90.01.

¹² AL: *Id.*

¹³ AL: *Id.*

¹⁴ AL: *Id.*

¹⁵ AR: See Ark. Code Ann. §§26-52-301; 26-52-304, Arkansas GR-25(H).

¹⁶ CA: Charges to access remote software or information on a website are not subject to tax.

¹⁷ CT: DRS has no published position.

State ¹	Fees charged for right to access information on website hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Florida ¹⁸	No Response	No Response	No Response	No Response	No Response	No Response
Georgia ¹⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes
Idaho ²⁰	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Illinois ²¹	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	Yes	No	Yes	Yes
Iowa ²²	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Kansas	No	No	Yes	Yes	Yes	Yes
Kentucky ²³	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Louisiana ²⁴	No Response	No Response	No Response	No Response	No Response	No Response
Maine	Not Applicable ²⁵	Not Applicable ²⁶	Not Applicable ²⁷	Not Applicable ²⁸	Not Applicable ²⁹	Not Applicable ³⁰
Maryland	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Massachusetts	No	Depends ³¹	Depends ³²	Depends ³³	Depends ³⁴	Depends ³⁵

¹⁸ FL: Nexus is considered on a case-by-case basis.

¹⁹ GA: We have not opined on nexus because of the instruction to answer “Not Applicable” if the charges are not taxable in our state.

²⁰ ID: Though agents or employees in the state may create nexus, note that sales of remotely accessed software or charges for access to online information are not taxable in Idaho. Thus, if the business only makes these types of sales into Idaho, the nexus question is irrelevant as it pertains to sales tax.

²¹ IL: **IL: Currently, computer software provided through a cloud-based delivery system — a system in which computer software is never downloaded onto a client’s computer and is only accessed remotely — is not subject to tax. The Department continues to review cloud-based arrangements. If, after review, the Department determines that these transactions are subject to tax, it will only apply this determination prospectively. A provider of software as a service is acting as a serviceman. If the provider does not transfer any tangible personal property to the customer then the transaction generally would not be subject to Retailer’s Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax. If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider’s network and services, it appears the subscriber is receiving the computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software. If the provider is not otherwise required to be registered under Section 2a of the Retailer’s Occupation Tax Act and qualifies as a de minimis serviceman, the provider could elect to pay Use Tax on its cost price of the computer software.** See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

²² IA: **The fees in this section are not taxable in Iowa.**

²³ KY: Access to nondownloadable prewritten software and access to information on a website are not taxable.

²⁴ LA: The Department has no position at this time.

²⁵ ME: The fees are not taxable in Maine.

²⁶ ME: *Id.*

²⁷ ME: The fees are not taxable in Maine; however, the out-of-state corporation may have nexus in Maine, depending on the facts and the number of occurrences.

²⁸ ME: *Id.*

²⁹ ME: *Id.*

³⁰ ME: *Id.*

³¹ MA: Depends on the facts.

³² MA: Depends on the service.

³³ MA: Depends on the facts.

³⁴ MA: *Id.*

³⁵ MA: *Id.*

State ¹	Fees charged for right to access information on website hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Michigan	Not Applicable ³⁶	Not Applicable ³⁷	Not Applicable ³⁸	Not Applicable ³⁹	Not Applicable ⁴⁰	Not Applicable ⁴¹
Minnesota	No	No	No Response ⁴²	No Response ⁴³	No Response ⁴⁴	Yes
Mississippi	No	No	Yes	Yes	Yes ⁴⁵	Yes⁴⁶
Missouri	Not Applicable	Yes	Yes	Yes	Yes	Yes
Nebraska ⁴⁷	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Nevada ⁴⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Jersey ⁴⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York	No	No	Yes	Yes	Yes	Yes
North Carolina ⁵⁰	Not Applicable	Not Applicable	Not Applicable ⁵¹	Not Applicable	Not Applicable ⁵²	Not Applicable ⁵³
North Dakota ⁵⁴	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania ⁵⁵	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rhode Island ⁵⁶	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
South Dakota	No	No	Yes	Yes	Yes	Yes

³⁶ MI: Fees are not taxable and the activity does not create nexus.

³⁷ MI: *Id.*

³⁸ MI: Fees are not taxable and the activity creates nexus.

³⁹ MI: *Id.*

⁴⁰ MI: *Id.*

⁴¹ MI: *Id.*

⁴² MN: If they are doing business in the state on more than 3 days per 12 month period.

⁴³ MN: *Id.*

⁴⁴ MN: If they are doing business in the state on more than 3 days per 12 month period. If [employees meet with customers in the state] more than 3 times in a 12 month period.

⁴⁵ **MS: Only if the employee meeting with customers provides services related to taxable sales or services, makes sales or takes orders.**

⁴⁶ **MS: *Id.***

⁴⁷ NE: These fees are not taxable in Nebraska. Some of these activities may nevertheless be nexus creating.

⁴⁸ **NV: These fees are not taxable in this State.**

⁴⁹ NJ: Fees to access software and training are not taxable. Nexus is created if taxpayer has a place of business in New Jersey, has employees working in this State (e.g., technicians, instructors, delivery persons, independent representatives, solicitors), or owns any business property here. Charges for installation and maintenance of tangible personal property are subject to tax. See N.J.S.A. 54:32B-3(b)(2).

⁵⁰ NC: Charges for “cloud computing” involving a person using online/web-hosted versions of prewritten software located on servers where the prewritten software is not downloaded, but is instead accessed electronically via the internet website, is not subject to NC sales & use tax.

⁵¹ NC: Activities performed in the State by employees or by a third party on behalf of the out-of-state corporation create nexus in the State, although many of the transactions are not subject to sales tax.

⁵² NC: *Id.*

⁵³ NC: *Id.*

⁵⁴ ND: These fees are not taxable in our state.

⁵⁵ PA: [These are] nontaxable fees.

⁵⁶ RI: When a vendor charges a fee to access information on its website or hosts software from their server which may be accessed by a customer, the transaction is not considered prewritten software delivered electronically and is not subject to tax. Tax is due if the prewritten computer software is downloaded.

State ¹	Fees charged for right to access information on website hosted on out-of-state server ²	Remotely performs taxable service in state and fees charged ³	Employee performs setup and fees charged ⁴	Independent contractor provides training and fees charged ⁵	Employees occasionally (e.g., one to 11 times per year) meet with customers and fees charged ⁶	Employees regularly (e.g., 12 or more times per year) meet with customers and fees charged ⁷
Tennessee ⁵⁷	Yes	Yes	Yes	Yes	Yes	Yes
Texas	No	No	Yes	Yes	Yes	Yes
Utah	Yes	Yes	Yes	Yes	Yes	Yes
Vermont ⁵⁸	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Virginia ⁵⁹	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Washington	No	No	Yes ⁶⁰	Yes ⁶¹	Yes ⁶²	Yes ⁶³
West Virginia	No	No	No	No	No	No
Wisconsin	No	No	Yes ⁶⁴	Yes ⁶⁵	Yes ⁶⁶	Yes ⁶⁷
Wyoming ⁶⁸	Not Applicable ⁶⁹	Not Applicable ⁷⁰	Yes ⁷¹	Not Applicable ⁷²	Not Applicable ⁷³	Not Applicable ⁷⁴

⁵⁷ TN: Effective July 1, 2016, out-of-state dealers who engage in regular or systematic solicitation of consumers in this state through any means and make sales that exceed \$500,000 to consumers in this state during the previous 12-month period also have substantial nexus with this state. See Tenn. Reg. & R. 1320-05-01-.129.

⁵⁸ VT: Under 2015 Vt. Laws No. 51 (S.138), §G.8, charges for the right to access prewritten software remotely are not considered charges for tangible personal property under 32 V.S.A. §9701(7).

⁵⁹ VA: The Department of Taxation has ruled cloud computing services are not taxable. (See PD 12-215; PD 12-191).

⁶⁰ WA: Assumes "access to information on its website" is a digital automated service or searchable database defined under RCW 82.04.192.

⁶¹ WA: *Id.*

⁶² WA: *Id.*

⁶³ WA: *Id.*

⁶⁴ WI: Nexus - Yes; Taxability - Depends on Facts.

⁶⁵ WI: *Id.*

⁶⁶ WI: *Id.*

⁶⁷ WI: *Id.*

⁶⁸ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming, or one agent operating in our state is enough to establish nexus.

⁶⁹ WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

⁷⁰ WY: *Id.*

⁷¹ WY: Wyoming imposes sales tax on services which repair, alter, or improve computer hardware, computer software, or canned software; therefore, employees in our state that are involved in taxable services create nexus.

⁷² WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property. Wyoming has no statutory provisions to impose sales tax on the professional services of a trainer/instructor. However, if course materials, manuals, etc., are separately sold from any training activities, they are subject to sales tax. Employees in our state making taxable sales create nexus.

⁷³ WY: Wyoming does not impose sales tax on charges to web hosted sites as the web hosted site maintains control over the software program (i.e., housed information) and the customer does not receive possession of any tangible personal property.

⁷⁴ WY: *Id.*

Nexus-Creating Activities: Sales and Use Tax — Registration With State Agencies/Departments

State ¹	Is registered with the Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Is registered for payroll ⁵	Is registered for workers' comp ⁶	Is registered as a gov't vendor/contractor ⁷
Alabama	No	Yes	Yes	Yes	Yes	Yes ⁸
Arizona	No	Yes	Yes	Yes	Yes	Yes
Arkansas ⁹	No	No	No	No	No	No
California	No	No	No	No	No	No
Colorado	No	No	Yes	Yes	Yes	No
Connecticut	Depends	Depends	Depends	Depends	Depends	No Response ¹⁰
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes
Florida ¹¹	Yes	No Response	No Response	No Response	No Response	No Response
Georgia ¹²	No	No	No	No	No	No
Hawaii	No	No	No	No	No	No
Idaho ¹³	No	No	No	No	No	No
Illinois ¹⁴	No Response	No Response	No Response	No Response	No Response	No Response
Indiana	No	No	No	No	No	No
Iowa	Yes	Yes	Yes	Yes	Yes	Yes
Kansas	Depends	Yes	Yes	Yes	Yes	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.

³ The out-of-state corporation holds a general business license issued by your state.

⁴ The out-of-state corporation holds a specialty license issued by your state, such as a specialty insurance license.

⁵ The out-of-state corporation is registered with the state tax department for payroll tax purposes.

⁶ The out-of-state corporation is registered with the state agency or department that regulates or administers workers' compensation.

⁷ The out-of-state corporation is registered with the state as a government vendor or contractor.

⁸ AL: See Code Section 41-4-116 entitled "Taxation on sales and leases of tangible personal property to state agency."

⁹ AR: The answers to these questions apply only when the sole factor is the mere registration with the above entities.

¹⁰ CT: Conn. Gen. Stat. §12-411b requires any contractors who provide tangible personal property to the state to collect use tax as if it had nexus.

¹¹ FL: Nexus is considered on a case-by-case basis.

¹² GA: Mere registration does not create nexus, but a taxpayer must be able to demonstrate that its only connection with the state is the registration and that the taxpayer is not conducting the business or activity for which it is registered. However, a taxpayer that registers for sales and use tax purposes must collect and remit the tax.

¹³ ID: While none of these factors alone create nexus, all of them (particularly [registration with the state tax department for payroll purposes] and [registration with a state agency or department that regulates or administers workers' compensation]) are indicators of a physical connection to Idaho and may, in combination with other factors, create nexus in the state.

¹⁴ IL: See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

State ¹	Is registered with the Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Is registered for payroll ⁵	Is registered for workers' comp ⁶	Is registered as a gov't vendor/contractor ⁷
Kentucky	No ¹⁵	No ¹⁶	No ¹⁷	No ¹⁸	No ¹⁹	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes	Yes
Maine	No	No	Yes ²⁰	No ²¹	No	No ²²
Maryland	No	No	No	No	No	No
Massachusetts ²³	Yes	Depends	Depends	Yes	Depends	Depends
Michigan	No	Yes ²⁴	No	Yes ²⁵	Yes ²⁶	No
Minnesota	No	No	No	No Response ²⁷	No Response ²⁸	No
Mississippi	No ²⁹	No ³⁰	No ³¹	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska ³²	No Response	No Response	No Response	No Response	No Response	No Response
Nevada	Yes	Yes	Yes	Yes	Yes	Yes
New Jersey	No	Yes	No	Yes ³³	Yes ³⁴	Yes
New Mexico	Yes	Yes	Yes	Yes	Yes	Yes
New York	No	No	No	No	No	Yes ³⁵
North Carolina	No	No	No	No	No	No ³⁶
North Dakota	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Pennsylvania	Yes	Yes	Yes	Yes	Yes	Yes
Rhode Island	No	No	No	No	No	Yes

¹⁵ KY: Depends upon the sales activities related to this question.

¹⁶ KY: *Id.*

¹⁷ KY: *Id.*

¹⁸ KY: *Id.*

¹⁹ KY: *Id.*

²⁰ ME: Wine shippers license. See 36 MRSA section 1754-B(1)(J).

²¹ **ME: Possibly; the fact that the corporation is registered in Maine for payroll tax purposes will raise the question of whether it has employees in Maine.**

²² ME: Possibly; a corporation must register as a seller if it is required to do so as a condition of doing business with the State of Maine by 5 MRSA section 1825-B(14) (sales of \$100,000 or more of tangible personal property to the State). See 36 MRSA section 1754-B(1)(I).

²³ MA: A company that is "qualified to do business in Massachusetts" will be found to have nexus as per 830 CMR 63.39.1(4)(a). The "employment of labor" also confers nexus. See 830 CMR 63.39.1(4)(b)5.

²⁴ MI: Assumes corporation has property located in Michigan.

²⁵ MI: Answer assumes corporation has employees present in Michigan.

²⁶ MI: *Id.*

²⁷ MN: If the company has employees working on the company's behalf for more than 3 days in a 12 month period, nexus is created.

²⁸ MN: *Id.*

²⁹ MS: This answer would be yes if taxpayer sells tangible personal property or provides taxable services.

³⁰ MS: *Id.*

³¹ MS: *Id.*

³² NE: Not enough facts to make a nexus determination.

³³ NJ: Assumes physical presence in New Jersey.

³⁴ NJ: Assumes physical presence in New Jersey. Refers to N.J.S.A. 52:32-44.

³⁵ NY: A certification that the corporation is a registered sales tax vendor is generally required for a business that contracts with the State. See Tax Law Section 5-a.

³⁶ NC: G.S. 143-59.1 provides, in part, "The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following: (1) A vendor if the vendor or an affiliate of the vendor if the Secretary of Revenue has determined that the vendor or affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina."

State ¹	Is registered with the Secretary of State ²	Holds business license ³	Holds specialty license ⁴	Is registered for payroll ⁵	Is registered for workers' comp ⁶	Is registered as a gov't vendor/contractor ⁷
South Dakota ³⁷	No	No	No	No	No	No
Tennessee	No	No	No	No	No	No
Texas	No	No	No	No	No	No
Utah	No	No	No	Yes	Yes	Yes
Vermont	Yes	Yes	Yes	Yes	Yes	Yes
Virginia	No	No ³⁸	No ³⁹	No	No	No
Washington	No	No	No	No	No	No
West Virginia	No	No	No	No	No	No
Wisconsin	No	No	No	No ⁴⁰	No ⁴¹	No
Wyoming ⁴²	No	No	No	No	No	No

³⁷ SD: Nexus is not created just by holding various licenses/registrations with other SD agencies. SD would review for other activities that create nexus.

³⁸ VA: The corporation would only have nexus with Virginia if it maintains a place of business in Virginia to utilize either of these business licenses. *See, e.g.*, PD 94-205.

³⁹ VA: *Id.*

⁴⁰ WI: Merely registering for payroll tax purposes does not create nexus in Wisconsin. However, if employees are working in Wisconsin, nexus for sales and use tax is created.

⁴¹ WI: Merely registering for workers' compensation tax does not create nexus in Wisconsin. However, if employees are working in Wisconsin, nexus for sales and use tax is created.

⁴² WY: Wyoming only requires licensure of those persons who meet our definition of a vendor. Registering an entity in our state is required of those acting as vendors but does not create nexus by itself (*See* W.S. 39-15-101(a)(xv); W.S. 39-16-101(a)(x).)

Nexus-Creating Activities: Sales and Use Tax — Drop Shipment Transactions (Part 1 of 2)

State ¹	Mfg. ships from distributor with nexus ²	Mfg. ships orders from distributor with no nexus ³	Distributor ships from in-state mfg. with title to inventory ⁴	Distributor ships from in-state mfg. with no title to inventory ⁵
Alabama	No	No	Yes	Yes
Arizona	Yes	No	Yes	Yes
Arkansas	Yes	No	No	No
California	No ⁶	No ⁷	No ⁸	Yes
Colorado	Yes	No	Yes	Yes
Connecticut ⁹	No Response	No Response	No Response	No Response
District of Columbia	Yes	No	Yes	Yes
Florida ¹⁰	Yes	No Response	Yes	Yes
Georgia	No	No	No	Yes
Hawaii	No	No	Yes	Yes
Idaho	No	No	No	Yes
Illinois ¹¹	No Response	No Response	No Response	No Response
Indiana ¹²	No	No	No	No
Iowa	No	No	No	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of-state corporation is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and the distributor has nexus with your state.

³ The out-of-state corporation is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and the distributor does not have nexus with your state.

⁴ The out-of-state corporation is a distributor that uses an in-state manufacturer, who acts as a fulfillment agency in your state to pack and ship orders via common carrier to in-state customers, and the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order.

⁵ The out-of-state corporation is a distributor that uses an in-state manufacturer, who acts as a fulfillment agency in your state to pack and ship orders via common carrier to in-state customers, and the corporation holds title to the inventory until the corporation directs the manufacturer to ship the order.

⁶ CA: This assumes that the manufacturer has no other contacts with the state and would therefore not be a retailer engaged in business in the state.

⁷ CA: *Id.*

⁸ CA: This assumes that the transactions collectively meet the definition of a drop shipment, and therefore the in-state drop shipper would be deemed the retailer and be liable for the tax (*See Reg. 1706*).

⁹ CT: *See Conn. Gen. Stat. §§12-407(a)(3)(A) & 12-407(a)(15)(C); Policy Statement 2013(3), Sales and Use Tax Rules for Drop Shipments.*

¹⁰ FL: Nexus is considered on a case-by-case basis.

¹¹ IL: The Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225. A drop-shipment situation is normally one in which an out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax. Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. *See 86 Ill. Adm. Code 130.1405 for the requirements of a Certificate of Resale. See Ill. Dept. of Rev., Illinois General Information Letter ST 17-0007-GIL (March 2, 2017).*

¹² IN: All answers assume the only potential contact with Indiana is the activity specified.

State ¹	Mfg. ships from distributor with nexus ²	Mfg. ships orders from distributor with no nexus ³	Distributor ships from in-state mfg. with title to inventory ⁴	Distributor ships from in-state mfg. with no title to inventory ⁵
Kansas ¹³	No	No	Yes	Yes
Kentucky	Yes	No	Yes	Yes
Louisiana	Yes	No	Yes	Yes
Maine	Yes ¹⁴	No ¹⁵	Yes	Yes
Maryland	No	No	Yes	Yes
Massachusetts ¹⁶	Yes	Depends	Yes	Yes
Michigan	Yes	No	Yes	Yes
Minnesota	Yes	No	No	Yes
Mississippi	No	No	No	Yes
Missouri	No	No	Yes	Yes
Nebraska	Yes ¹⁷	No	Yes	Yes
Nevada	Yes	No	Yes	Yes
New Jersey	No	No	No	Yes
New Mexico	Yes	No	Yes	Yes
New York	No	No	No ¹⁸	No ¹⁹
North Carolina	No	No	No	Yes
North Dakota	Yes	No	Yes	Yes
Pennsylvania	No	No	Yes	Yes
Rhode Island ²⁰	Yes	No	Yes	Yes
South Dakota ²¹	No	No	Yes	Yes
Tennessee	No	No	No	Yes
Texas	No ²²	No ²³	No	Yes
Utah	Yes	No	No	Yes
Vermont	No Response	No Response	No Response	No Response

¹³ KS: See K.S.A. 79-3702(h).

¹⁴ ME: Probably; there is a rebuttable presumption of nexus if an “affiliated person” has nexus and in certain other circumstances; see 36 MRSA section 1754-B(1-A).

¹⁵ ME: Probably not, but a presumption of nexus could exist under certain circumstances; see 36 MRSA section 1754-B(1-A)(C).

¹⁶ MA: “When tangible personal property is physically delivered by an owner, a former owner thereof, a factor, or an agent or representative of the owner, former owner or factor, to the ultimate purchaser residing in or doing business in the commonwealth, or to any person for redelivery to the purchaser, pursuant to a retail sale made by a vendor not engaged in business in the commonwealth, the person making or effectuating the delivery shall be considered the vendor of that property, the transaction shall be a retail sale in the commonwealth by the person and that person, if engaged in business in the commonwealth, shall include the retail selling price in its gross receipts, regardless of any contrary statutory or contractual terms concerning the passage of title or risk of loss which may be expressly or impliedly applicable to any contract or other agreement or arrangement for the sale, transportation, shipment or delivery of that property.” See G.L. c. 64H, §1.

¹⁷ NE: Assuming the distributor is acting as an agent of the manufacturer.

¹⁸ NY: Use of an unaffiliated fulfillment service provider in the State does not create nexus. See Tax Law Section 1101(b)(8)(v).

¹⁹ NY: *Id.*

²⁰ RI: See RIGL 44-18-23(1).

²¹ SD: SD would ask more questions. Nexus may apply.

²² TX: (1) This answer assumes that the distributor purchases items from the manufacturer for resale to the end user. If the distributor takes orders on behalf of the manufacturer, the manufacturer is engaged in business in Texas pursuant to Rule 3.286(a)(2)(B). (2) Direct sales companies that use independent salespersons, sometimes referred to as distributors have nexus in Texas. See Rule 3.286(a)(2)(D).

²³ TX: *Id.*

State ¹	Mfg. ships from distributor with nexus ²	Mfg. ships orders from distributor with no nexus ³	Distributor ships from in-state mfg. with title to inventory ⁴	Distributor ships from in-state mfg. with no title to inventory ⁵
Virginia ²⁴	No	No	No	No
Washington	No	No	No	Yes ²⁵
West Virginia	Yes	No	No	No
Wisconsin	No	No	Yes	Yes
Wyoming ²⁶	No	No	No	Yes ²⁷

²⁴ VA: These responses may change if the distribution center or manufacturer and out-of-state corporation are commonly controlled.

²⁵ WA: Could be considered a “having property in this state”- which would be sufficient to create nexus.

²⁶ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in or state is enough to establish nexus.

²⁷ WY: Storing inventory in the state is a nexus creating activity.

Nexus-Creating Activities: Sales and Use Tax — Drop Shipment Transactions (Part 2 of 2)

State ¹	Distributor uses in-state mfg. for fulfillment service w/ title to inventory ²	Distributor uses in-state mfg. for fulfillment service w/ no title to inventory ³	Distributor charges back returns to mfg. with title ⁴	Distributor retains ownership of returns ⁵
Alabama	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	Yes	No	No
California	Yes	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	Yes
Connecticut ⁶	No Response	No Response	No Response	No Response
District of Columbia	No	No	Yes	Yes
Florida ⁷	Yes	Yes	No Response	No Response
Georgia	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes
Illinois ⁸	No Response	No Response	No Response	No Response
Indiana ⁹	No	No	No	No
Iowa	No	Yes	No	Yes

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² The out-of state corporation is a distributor that contracts with an in-state manufacturer to perform an order fulfillment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and the manufacturer holds title to the inventory prior to shipment.

³ The out-of state corporation is a distributor that contracts with an in-state manufacturer to perform an order fulfillment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and the corporation holds title to the inventory prior to shipment.

⁴ The out-of state corporation is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and the corporation charges product return inventory back to the manufacturer such that the manufacturer owns the returned inventory.

⁵ The out-of state corporation is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and the corporation retains ownership of the product return inventory.

⁶ CT: See Conn. Gen. Stat. §§12-407(a)(3)(A) & 12-407(a)(15)(C); Policy Statement 2013(3), Sales and Use Tax Rules for Drop Shipments.

⁷ FL: Nexus is considered on a case-by-case basis.

⁸ IL: The Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225. A drop-shipment situation is normally one in which an out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax. Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405 for the requirements of a Certificate of Resale. See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (March 2, 2017)**.

⁹ IN: All answers assume the only potential contact with Indiana is the activity specified.

State ¹	Distributor uses in-state mfg. for fulfillment service w/ title to inventory ²	Distributor uses in-state mfg. for fulfillment service w/ no title to inventory ³	Distributor charges back returns to mfg. with title ⁴	Distributor retains ownership of returns ⁵
Kansas ¹⁰	Yes	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes ¹¹	Yes
Maryland	Yes	Yes	Yes	Yes
Massachusetts ¹²	Depends	Depends	Depends	Depends
Michigan	Yes	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes
New Jersey	No ¹³	Yes ¹⁴	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes
New York ¹⁵	No	No	No	No
North Carolina	Yes	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes	Yes
Rhode Island ¹⁶	Yes	Yes	Yes	Yes
South Dakota	Yes ¹⁷	Yes ¹⁸	Yes	Yes
Tennessee ¹⁹	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	Yes
Utah	No	Yes	No	Yes
Vermont	No Response	No Response	No Response	No Response
Virginia ²⁰	No	No	No	No

¹⁰ KS: See K.S.A. 79-3702(h).

¹¹ ME: Probably; see especially 36 MRSA section 1754-B(1-A)(B)(6).

¹² MA: "When tangible personal property is physically delivered by an owner, a former owner thereof, a factor, or an agent or representative of the owner, former owner or factor, to the ultimate purchaser residing in or doing business in the commonwealth, or to any person for redelivery to the purchaser, pursuant to a retail sale made by a vendor not engaged in business in the commonwealth, the person making or effectuating the delivery shall be considered the vendor of that property, the transaction shall be a retail sale in the commonwealth by the person and that person, if engaged in business in the commonwealth, shall include the retail selling price in its gross receipts, regardless of any contrary statutory or contractual terms concerning the passage of title or risk of loss which may be expressly or impliedly applicable to any contract or other agreement or arrangement for the sale, transportation, shipment or delivery of that property." See G.L. c. 64H, § 1.

¹³ NJ: Answers assume that none of the factors in N.J.S.A. 54:32B-2(i)(1) have been met.

¹⁴ NJ: *Id.*

¹⁵ NY: Use of an unaffiliated service provider in the State does not create nexus. See Tax Law Section 1101(b)(8)(v).

¹⁶ RI: See RIGL 44-18-23(1).

¹⁷ SD: SD would ask more questions. Nexus may apply.

¹⁸ SD: *Id.*

¹⁹ TN: The answers assume the described activities create an agency relationship with the manufacturer.

²⁰ VA: These responses may change if the distribution center or manufacturer and out-of-state corporation are commonly controlled.

State¹	Distributor uses in-state mfg. for fulfillment service w/ title to inventory²	Distributor uses in-state mfg. for fulfillment service w/ no title to inventory³	Distributor charges back returns to mfg. with title⁴	Distributor retains ownership of returns⁵
Washington	Yes	Yes ²¹	Yes	Yes ²²
West Virginia	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes
Wyoming ²³	Yes	Yes	Yes	Yes

²¹ WA: Could be considered a “having property in this state”- which would be sufficient to create nexus.

²² WA: *Id.*

²³ WY: Wyoming does not have a de minimis threshold that businesses must meet before nexus is established. One delivery into our state, one incidence of owned or leased equipment in Wyoming or one agent operating in or state is enough to establish nexus. Storing inventory in the state is a nexus creating activity. By performing services on behalf of the distributor, the manufacturer has established himself as acting as an in-state agent for the distributor, giving the distributor nexus.

Refunds and Qui Tams

States Differ In Treatment of Sales Tax Refund Claims, *Qui Tam* Lawsuits

Sales and use tax is somewhat unique among state taxes in that liability for the tax is imposed on two separate parties: the vendor and the purchaser. In general, the vendor is required to collect the tax from the purchaser and remit it on behalf of the state. A minority of states treat their sales tax more like a gross receipts or privilege tax imposed on the vendor and grant the vendor the option of passing the tax through to the purchaser.

The rights and obligations of the vendor and purchaser when the incorrect amount of tax is collected differ by state and are not always clear from the states' statutes. States' positions in this area may inform vendors in establishing best practices for reducing the risk of litigation arising from collecting the incorrect amount of tax. It is also important for purchasers to know what procedures are available to them when they discover that they have overpaid tax.

Refund Claims

Sixteen states responded that purchasers may not seek sales tax refunds directly from the state. States responding that such claims by purchasers are not permitted may be more likely to view their sales tax as akin to a gross receipts or privilege tax on the vendor. However, consumer protection laws in these states may still require that vendors refund amounts erroneously overcollected to their purchasers.

For instance, Hawaii responded that under its gross excise tax, purchasers could not seek refunds directly from the state for overcollected tax, but that vendors are nonetheless required by consumer protection laws to return overcollected tax refunded by the state to purchasers. In this and similar states, purchasers from whom tax was overcollected may need to make claims directly against their vendors or request that their vendors seek refunds on their behalf. In other states (e.g., Florida and Massachusetts), a vendor may assign to its purchaser the right to seek a refund directly from the state.

Thirty-one states responded that vendors that obtain sales tax refunds must refund the tax to their purchasers. Other states (e.g., North Carolina and Virginia) noted that they require the vendor to refund or credit the overcollected tax to their purchasers prior to seeking a refund.

Twenty-three states indicated that they permit purchasers to seek sales tax refunds directly from the state, either in addition to or instead of requiring the vendor to refund the tax. Several states noted that a purchaser may only seek a refund directly from the state if the purchaser has requested a refund from the vendor and the vendor refused or was unable to issue the refund.

Qui Tam and Class Action Lawsuits

A minority of states said they have a false claims act under which *qui tam* lawsuits may be brought for the underpayment of tax. This is a continuing area of concern for vendors struggling to comply with often vague sales and use tax laws. Taxpayers that seek to avoid *qui tam* claims by erring on the side of overcharging sales tax may find themselves defending against class action lawsuits instead.

A minority of states also responded that they have consumer protection laws under which purchasers may bring class action lawsuits against vendors for overcollected sales or use tax. Eleven states permit vendors to prove as an affirmative defense that they remitted overcollected sales tax to the state.

The states' responses are detailed in charts on the following pages.

For more information, see:
Sales and Use Tax Navigator at 31.10.

Refund Claims

State ¹	Requires vendors obtaining sales tax refunds to refund tax to purchasers ²	Permits purchasers to seek sales tax refunds directly from state ³
Alabama ⁴	Yes	No
Arizona ⁵	No	No
Arkansas ⁶	No	No
California	Yes	No
Colorado	Yes	Yes
Connecticut ⁷	Yes	Yes
District of Columbia ⁸	Yes	Yes
Florida	Yes	No ⁹
Georgia	Yes	Yes
Hawaii	Yes ¹⁰	No
Idaho	Yes	Yes ¹¹
Illinois ¹²	No Response	No Response
Indiana ¹³	Yes	Yes
Iowa	No ¹⁴	Yes
Kansas	Yes	No
Kentucky	Yes	No
Louisiana	No Response	No Response

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² Your state requires vendors that obtain sales tax refunds to refund the tax to their purchasers.

³ Your state permits purchasers to seek sales tax refunds directly from the state for over-collected tax remitted by their vendors.

⁴ **AL: Purchasers must do a joint petition for refund of overcollected and remitted sales taxes. See Code Section 40-2A-7(c)(1) - titled "PETITION FOR REFUND ALLOWED, GENERALLY." The Alabama Simplified Sellers Use Tax (SSUT) Program does allow purchasers to request a direct petition for refund (once in any 12 month period) if the tax rate in their location is less than the flat 8% collected by the SSUT seller. See ACT No. 2015-448.**

⁵ AZ: Arizona's transaction privilege tax (TPT) is imposed on the vendor for the privilege of doing business in the state. The vendor may pass the financial burden of the tax on to its customers, but the vendor remains ultimately liable for the tax. Only the vendor as the taxpayer has recourse to pursue a claim for overcollection or a refund.

⁶ AR: Purchaser may obtain a direct refund in very limited circumstances as outlined in rules promulgated by the tax agency.

⁷ CT: See Policy Statement 98(5), *Sales and Use Tax Refund Policy*.

⁸ DC: Either party could request refund.

⁹ FL: The purchaser's vendor may assign the vendor's right of claim to a refund by making an assignment of rights. The purchaser must provide all proof of the claim that is required by the vendor.

¹⁰ HI: Consumer protection laws prohibit vendors from representing as tax any amount in excess of the amount paid over to the State.

¹¹ ID: Once the purchaser has requested a refund from the vendor and the vendor has refused.

¹² IL: Claims for credit and refunds are available when a person shows he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid (**e.g., the tax was refunded to the party who paid the tax**). Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. See 86 Ill. Adm. Code 130.1501(b). See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (Mar. 2, 2017)**.

¹³ IN: For a vendor to obtain a sales tax refund, the vendor must relinquish the right to go against the state. In addition, this applies only when tax has been collected from the purchaser.

¹⁴ IA: Iowa law does not allow retailers to obtain a refund of sales tax remitted. Only the purchaser who paid the sales tax may obtain a refund.

State ¹	Requires vendors obtaining sales tax refunds to refund tax to purchasers ²	Permits purchasers to seek sales tax refunds directly from state ³
Maine	No ¹⁵	Yes ¹⁶
Maryland	Yes	Yes
Massachusetts	Yes	Depends ¹⁷
Michigan	Yes	No
Minnesota	Yes	No Response ¹⁸
Mississippi	Yes	No
Missouri	No	Yes
Nebraska	Yes ¹⁹	Yes
Nevada	Yes	Yes ²⁰
New Jersey	Yes	Yes
New Mexico	No	No
New York	No Response ²¹	Yes
North Carolina	No Response ²²	No ²³
North Dakota	Yes	Depends ²⁴
Ohio	Yes	Yes
Pennsylvania	No Response ²⁵	Yes
Rhode Island	Yes	No
South Dakota	Yes	No
Tennessee	Yes	No
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	Yes ²⁶	Yes ²⁷

¹⁵ ME: Generally; *but see* Title 36 Section 1814(3), which provides that in cases of excessive or erroneous collections, the excess tax will be refunded only upon submission of proof that the amount has been returned or credited to the person from whom it was collected.

¹⁶ ME: Only if the seller refuses to provide the refund.

¹⁷ MA: Purchasers need to have limited POA from seller.

¹⁸ MN: The tax has to be over \$500 if it is for sales tax charged in error for MN to refund. Otherwise taxpayers are told to request a refund from their vendors.

¹⁹ NE: Retailers must issue credit memos to customers prior to filing a claim for refund.

²⁰ NV: **Only if the vendor refuses or is unable to refund the money to the purchaser.**

²¹ NY: Vendor may obtain refund if it can show it refunded tax to its customers.

²² NC: *See* GS 105-164.11. Prior to receiving a refund, the seller must give the purchaser credit for or a refund of the overcollected tax.

²³ NC: Possible exception, *see* GS 105-164.11A Refund of tax paid on rescinded sale or cancellation of service.

²⁴ ND: Yes/No. A purchaser charged local tax above the maximum tax due may file for a refund with the state. All other overcollected tax must be refunded by the vendor to the purchaser.

²⁵ PA: Tax may only be refunded to the actual taxpayer.

²⁶ VA: 58.1-625 provides that a dealer will not be refunded any erroneously collected taxes until he is able to demonstrate that the tax has been refunded to the customer or credited to the customer's account.

²⁷ VA: Generally, the Department prefers that a purchaser who has erroneously paid sales and use taxes seek a refund from the retailer in order to prevent a misallocation of the local sales and use tax; however, in some instances, the Department will grant a sales and use tax refund directly to the customer.

State ¹	Requires vendors obtaining sales tax refunds to refund tax to purchasers ²	Permits purchasers to seek sales tax refunds directly from state ³
Washington	No ²⁸	Yes ²⁹
West Virginia	No	Yes ³⁰
Wisconsin	Yes ³¹	Yes ³²
Wyoming	Yes ³³	No ³⁴

²⁸ WA: In order for a vendor to obtain a refund from the state, they must first show that they have refunded the sales tax to their customer.

²⁹ WA: Customers must first try to obtain the refund from the vendor; however if the vendor refuses to provide a refund, they may request a refund directly from the state.

³⁰ WV: W.Va. Code 11-15-9b(a): Allows any person having a right or claim to the exemption for purchases of tangible personal property and services for direct use in research and development to first pay the tax to the vendor, then petition the Tax Commissioner for a refund or credit . . . ; 110CSR15-2.33.2. Any person claiming to be aggrieved by having to pay the consumers sales and service tax shall pay the amount of tax to the retail merchant (vendor) and file a claim for refund with the Tax Commissioner; 110CSR15-9.4. Refundable Exemptions. - The vendor liable for collection of the consumers sales and service tax or use tax shall collect such taxes when making the following sales of tangible personal property or taxable services . . . ; and such taxes, after payment, shall, upon proper application therefor, be refunded or credited to the purchaser as provided in W. Va. Code §11-15-9b and 11-15A-3b. (11-15A-3b was repealed on 1996); 110CSR15-9a allows any person having a right or claim to an exemption from the consumers sales and service tax or the use tax to file a claim for refund with the Tax Commissioner, but first should have paid the tax to the vendor.

³¹ WI: Section 77.59(5m), Wis. Stats., requires a seller who files a claim for refund for taxes that the seller collected from buyers to return the taxes and related interest to the buyer, with exception. A buyer may file a claim for refund directly from the Department of Revenue if the claim is at least \$50 or if certain exceptions apply. *See* Section 77.59(4)(a), Wis. Stats.

³² WI: *Id.*

³³ WY: If the tax has been erroneously collected from a customer it must be returned to the customer that was overcharged. Any tax not able to be correctly refunded must be held by the Department as vendors are not entitled to retain excess taxes collected. (*See* W.S. 39-15-108(c)(iv); WY Dept of Rev Rules, Chap 5(l).)

³⁴ WY: The Department is only permitted to refund or credit the vendor who originally paid the tax directly to the Department. (*See* W.S. 39-15-109(c)(i); W.S. 39-15-109(c)(ii).)

Qui Tam and Class Action Lawsuits

State ¹	Has false claims act allowing private party to bring lawsuit against taxpayer on behalf of state for underpaying tax ²	Has consumer protection law allowing purchasers to bring class action lawsuits against vendors for over-collected tax ³	Permits vendors to prove over-collected sales tax remitted as affirmative defense ⁴
Alabama	No	No	Yes ⁵
Arizona	No	No ⁶	No ⁷
Arkansas	No	No	No
California	No	No ⁸	Yes ⁹
Colorado	No	No	Yes
Connecticut ¹⁰	Response	Response	Response
District of Columbia	No	No	Yes
Florida	No	No	No
Georgia	No	No	Not Applicable
Hawaii	No	Yes ¹¹	Yes
Idaho	Response	Response	Response
Illinois ¹²	Response	Response	Response
Indiana	No	No ¹³	No
Iowa	No	No ¹⁴	No

¹ Responses in bold indicate the answers changed from last year's survey, or the state is answering the questions for the first time. State names in bold indicate the state participated this year but did not participate in the previous year.

Depends indicates that the respondent's answer would depend on the facts and circumstances.

AK, DE, MT, NH and OR do not impose a sales and use tax.

FL's responses are from 2016.

OH, OK and SC did not participate in this portion of the survey.

NYC did not participate in the sales tax portion of the survey because the sales tax is administered by New York State.

² Your state has a false claims act under which a private party, acting as a relator on behalf of the state, may bring a lawsuit against a taxpayer for underpaying tax.

³ Your state has a consumer protection law under which purchasers may bring class action lawsuits against vendors for over-collected sales or use tax.

⁴ Your state permits vendors to prove that they remitted allegedly over-collected sales tax as an affirmative defense to over-collection claims.

⁵ AL: See Code Section 40-2A-7(c)(1) - titled "Petition for Refund Allowed, Generally." Allows for joint petition for refund of overcollected and remitted sales taxes.

⁶ AZ: A purchaser has no claim for overcollection of transaction privilege tax (TPT). Arizona's TPT is imposed on the vendor for the privilege of doing business in the state. The vendor may pass the financial burden of the tax on to its customers, but the vendor is the taxpayer and remains ultimately liable for the tax.

⁷ AZ: *Id.*

⁸ CA: See *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1134 (holding that a consumer could not maintain an action under California's Unfair Competition Law (Bus. & Prof. Code, §17200 et seq.) or Consumer Legal Remedies Act (Civil Code, §1750 et seq.) based on the assertion that the retailer collected excess sales tax reimbursement on a nontaxable sale.)

⁹ CA: See Rev. & Tax. Code, §6901.5; *Loeffler v. Target Corp.*, supra, 58 Cal.4th at p. 1134 (retailer has choice under Revenue and Taxation Code section 6901.5 to refund excess sales tax reimbursement to the purchasers or to remit to the Board; if the retailer chooses to remit the excess sales tax reimbursement to the Board, the retailer reaches a "safe harbor.")

¹⁰ CT: There are no statutes relevant to these questions that are specific to tax collection. General statutory provisions may apply.

¹¹ HI: See Section 480-13.3 HRS.

¹² IL: Pursuant to the Illinois False Claims Act, 740 ILCS 175, a private party acting as a relator on behalf of the State, may bring a lawsuit against a taxpayer for underpaying sales tax. Further, Illinois courts have recognized class action suits for recovery of wrongly paid taxes. See *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill. 2d 389 (1989); *Harrison Sheet Steel Co. v. Lyons*, 15 Ill. 2d 539 (1959). See Ill. Dept. of Rev., Illinois General Information Letter **ST 17-0007-GIL (Mar. 2, 2017)**.

¹³ IN: There are no laws explicitly permitting or disallowing such lawsuits.

¹⁴ IA: A purchaser could seek class action using Iowa's general class certification process.

State ¹	Has false claims act allowing private party to bring lawsuit against taxpayer on behalf of state for underpaying tax ²	Has consumer protection law allowing purchasers to bring class action lawsuits against vendors for over-collected tax ³	Permits vendors to prove over-collected sales tax remitted as affirmative defense ⁴
Kansas	No	No	No
Kentucky	No	Yes	Yes ¹⁵
Louisiana	No Response	No Response	No Response
Maine	Yes ¹⁶	Yes ¹⁷	No Response ¹⁸
Maryland	No	No	No
Massachusetts ¹⁹	Depends	No Response	Depends
Michigan	No	No	No
Minnesota	No	No	No
Mississippi	No ²⁰	No ²¹	Yes ²²
Missouri	No	Yes ²³	No Response ²⁴
Nebraska ²⁵	No Response	No Response	No Response
Nevada	Yes	Yes	Yes
New Jersey	No	No	No
New Mexico	No	No	No
New York ²⁶	No Response	No Response	No Response
North Carolina	No	No Response ²⁷	No ²⁸
North Dakota	No	No	Not Applicable
Ohio	No Response	No Response	No Response
Pennsylvania	No	No	No Response ²⁹
Rhode Island	Yes	No Response ³⁰	Yes
South Dakota	No	No	No

¹⁵ KY: See KRS 139.771.

¹⁶ ME: See the Maine Unfair Trade Practices Act, Title 5 Section 205-A - 214; and *Flippo v. LL Bean, Inc.* (Maine Supreme Court 2006).

¹⁷ ME: *Id.*

¹⁸ ME: Unsure, but unlikely.

¹⁹ MA: Massachusetts False Claims Act allows the state Attorney General and, in some cases, individuals to bring false claims actions. See G.L. c. 12, ss. 5A-5O.

²⁰ MS: The Attorney General is the only one authorized for this type lawsuit in Mississippi. (S)He can employ private attorneys for assistance in the State's interest.

²¹ MS: *Id.*

²² MS: Never challenged in Mississippi court.

²³ MO: Class action suit.

²⁴ MO: Never established.

²⁵ NE: The Nebraska Revenue Act does not contain any provisions related to Class Action Lawsuits. Contact the Nebraska Attorney General's Office for information on consumer protection.

²⁶ NY: See <http://www.ag.ny.gov> for specifics on New York's False Claims Act.

²⁷ NC: **Consumer protection laws administered by NCDOJ.**

²⁸ NC: Possible exception: GS 105-164.11(e) Reliance on Written Advice.

²⁹ PA: If a vendor over-collected sales tax, the purchaser's remedy is to seek a refund from the Department. See *Lilian v. Commonwealth*, 467 Pa. 15, 354 A.2d 250 (1976); *Stoloff, et al v. The Neiman Marcus Group, Inc.*, 2011 PA Super 110; 24 A.3d 355(2011).

³⁰ RI: Unknown because of "the mention of class action lawsuits." See 44-18-7.1(1).

State ¹	Has false claims act allowing private party to bring lawsuit against taxpayer on behalf of state for underpaying tax ²	Has consumer protection law allowing purchasers to bring class action lawsuits against vendors for over-collected tax ³	Permits vendors to prove over-collected sales tax remitted as affirmative defense ⁴
Tennessee	No	No	No Response ³¹
Texas	No	No	No
Utah	No	No ³²	No ³³
Vermont	No	Yes	Yes
Virginia ³⁴	No	No	Not Applicable
Washington	No	No	No
West Virginia	No	No	Yes
Wisconsin	No	No	Not Applicable
Wyoming	No Response ³⁵	No Response ³⁶	No Response ³⁷

³¹ TN: In Tennessee vendors must remit any over-collected sales tax. See Tenn. Code Ann. §67-6-514.

³² UT: Has a class action statute but the class action is brought against the Tax Commission and not the vendor.

³³ UT: *Id.*

³⁴ VA: Virginia's False Claims Act does not apply to claims, records, or statements relating to state or local taxes. (See 8.01-216.3).

³⁵ WY: The department has the authority to contract with collection agencies for required collection services. (See W.S. 39-15-107(b)(x).) Apart from these activities only the attorney general or a district attorney can bring action in the name of the state. (See W.S. 39-15-108(c)(x); W.S. 39-15-306(b)(ii).)

³⁶ WY: This is beyond the scope of our administration of Wyoming Statutes, Title 39. Therefore no response is given.

³⁷ WY: *Id.*

Questionnaire

Section I. State Nexus Policies
A. State Statutes, Regulations, or Administrative Pronouncements Specifically Addressing Income Tax Nexus
Please identify any statute, regulation, administrative pronouncement or judicial decision that sets forth your state's income tax nexus policy.
Statute(s) addressing income tax nexus:
Regulation(s) addressing income tax nexus:
Administrative pronouncement(s) addressing income tax nexus:
Judicial decision(s) addressing income tax nexus:

B. Adherence to <i>Quill</i> for Income Tax Nexus	2016 Response	2017 Response
Your state:		
1. applies <i>Quill</i> (i.e., requires that a corporation have a physical presence in the state in order to create nexus) in making income tax nexus determinations.		
2. If the answer to question 1, above, is "no," please indicate if your state had ever adhered to <i>Quill</i> in making income tax nexus determinations.		
3. If the answer to question 2, above, is "yes," please indicate when your state ceased adhering to <i>Quill</i> in making income tax nexus determinations.		
Comments: (Please indicate the question to which you are referring.)		

C. Adherence to the Physical Presence, Economic Presence and/or Factor Presence Nexus Standards	2016 Response	2017 Response
Your state's income tax nexus policy is based on:		
1. physical presence (<i>i.e.</i> , requires that a corporation have a physical presence in the state in order to create nexus).		
2. physical presence as a result of an agency relationship (<i>i.e.</i> , nexus may result from an out-of-state corporation's agency relationship with an in-state entity that has the right to bind the corporation to a contract).		
3. economic presence (<i>i.e.</i> , nexus may be triggered by conducting a certain amount of economic activity within the state, even if a corporation lacks a physical presence within the state's borders).		
4. factor presence (<i>i.e.</i> , nexus may be triggered by conducting a certain amount of economic activity within the state, as measured by an annual dollar threshold or activity threshold, even if a corporation lacks a physical presence within the state's borders).	NEW	
Comments: (Please indicate the question to which you are referring.)		

D. Adherence to MTC's Factor Presence Nexus Standard	2016 Response	2017 Response
The Multistate Tax Commission's (MTC) model statute, <i>Factor Presence Nexus Standard for Business Activity Taxes</i> , uses both economic and physical presence to determine nexus. However, the model statute sets forth minimum thresholds for each. It states that substantial nexus is established if any of the following limits are exceeded during the tax period: <ul style="list-style-type: none"> • \$50,000 of property, • \$50,000 of payroll, • \$500,000 of sales, or • 25 percent of total property, total payroll, or total sales. 		
Please answer "Yes" or "No" to the questions below. If your response to question 4 in Part C of Section I, above, is "No," please answer "Not Applicable."		
Your state's factor presence nexus standard :		
1. generally conforms to the MTC's model statute, <i>Factor Presence Nexus Standard for Business Activity Taxes</i> . (If your response is "yes," please cite to the applicable statute and/or regulation in the Comments section below.)		
2. partially conforms to the MTC's model statute, <i>Factor Presence Nexus Standard for Business Activity Taxes</i> . Please describe how your state's law differs in the Comments section below. (DO NOT ANSWER IF YOU SAID "YES" TO QUESTION 1, ABOVE.)		
3. If you answered "yes" to questions one or two, above, has your state's reliance on the MTC's model statute been tested in court? If so, please provide the relevant citations in the Comments section below.		
4. does not conform to any aspects of the MTC's model statute, <i>Factor Presence Nexus Standard for Business Activity Taxes</i> .		
This question has been deleted for 2017.		
5. has adopted an annual dollar threshold or activity threshold applicable only to specific industry groups, which is not based on the MTC's model statute, <i>Factor Presence Nexus Standard for Business Activity Taxes</i> . (If your response is "yes," please set forth the standard(s) and applicable industry group(s) in the Comments section below.)	X	X
Comments: (Please indicate the question to which you are referring.)		

E. Adoption of Multistate Tax Commission Statements on Federal Pub. L. No. 86-272 (New for 2017)	2016 Response	2017 Response
<p>The Multistate Tax Commission (MTC) has issued three separate statements and one amendment to guidance issued in 1986 aimed at helping states comply with federal Pub. L. No. 86-272. The Phase I Statement incorporates the U.S. Supreme Court's ruling in <i>Wisconsin Dept. of Rev. v. William Wrigley, Jr.</i>, Co. 505 U.S. 214 (1992). The Phase II Statement added and removed several activities from the non-exhaustive lists of protected and unprotected activities, clarified that the throwback rule is applied on an entity-by-entity basis when a combined or consolidated report is filed and permits signatory states to apply Pub. L. No. 86-272 protections to transactions occurring in non-U.S. commerce. The original signatories to the Phase II statement were AL, AZ, AR, CA, CO, HI, ID, LA, MT, NM, ND, OR, RI and UT. The 2001 Amendment to its guidelines removed delivery of inventory via company-owned vehicles in a state from the list of unprotected activities.</p>		
<p>Your state:</p>		
<p>1. is a signatory to the Phase I Statement without any additions or exceptions.</p>	<p>NEW</p>	
<p>2. is a signatory to the Phase I Statement and created your own additions or exceptions to the statement .</p>	<p>NEW</p>	
<p>3. is not a signatory to the Phase I Statement, but has laws that adhere to the statement's list of immune and non-immune activities.</p>	<p>NEW</p>	
<p>4. is a signatory to the Phase II Statement without any additions or exceptions.</p>	<p>NEW</p>	
<p>5. is a signatory to the Phase II Statement and created your own additions or exceptions to the statement.</p>	<p>NEW</p>	
<p>6. is not a signatory to the Phase II Statement, but has laws that adhere to the statement's list of immune and non-immune activities.</p>	<p>NEW</p>	
<p>7. conformed its laws to the MTC's 2001 amendment to its guidelines on Pub. L. No. 86-272.</p>	<p>NEW</p>	
<p>8. does not conform to the Phase I Statement, Phase II Statement or 2001 Amendment.</p>	<p>NEW</p>	
<p>Comments: (Please indicate the question to which you are referring.)</p>		
<p></p>		

F. Nexus Enforcement Policies	2016 Response	2017 Response
Please answer "Yes" or "No" to the questions below.		
Your state:		
1. sends a nexus questionnaire to corporations that it believes might be doing business within its borders. If "Yes," please indicate the form number in the Comments section below.		
2. imposes tax on a corporation that triggers nexus for the entire year (<i>i.e.</i> , including amounts in the sales factor that occurred before nexus was established).		
3. requires a tax return to be filed even if the corporation's activities are protected by Pub. L. No. 86-272.		
4. requires a tax return to be filed by a corporation that has registered in the state, but has not yet commenced doing business.		
5. would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (<i>i.e.</i> , trailing nexus).		
6. would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (<i>i.e.</i> , trailing nexus).		
7. would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (<i>i.e.</i> , trailing nexus).		
Comments: (Please indicate the question to which you are referring.)		
<p style="color: red;">For questions 5-7 on "trailing nexus," please explain below whether your answer depends on the magnitude of the nexus-creating activity (e.g., three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum super tanker).</p>		

Section II. Nexus-Creating Activities		
Please indicate "Yes" or "No" to show whether each of the following activities or relationships would, by itself, create sufficient nexus to subject an out-of-state corporation to an income-based tax. When determining whether the listed activity/relationship would create nexus in your state for a corporation, assume that each item is the only activity/relationship the corporation has in your state (other than activities protected by Pub. L. No. 86-272).		
A. General Activities	2016 Response	2017 Response
1. The out-of-state corporation is doing business in your state.		
2. The out-of-state corporation makes sales to customers in your state by means of a 1-800 telephone order number advertised in your state.		
3. The out-of-state corporation is listed in the local telephone books of cities in your state.		
4. The out-of-state corporation uses local phone numbers in your state, calls to which are forwarded to the out-of-state corporation's headquarters located in another state.		
5. The out-of-state corporation maintains a bank account at a bank located in your state.		
6. The out-of-state corporation provides one to six days of consulting services in your state during the year.		
7. The out-of-state corporation, through a third party, provides warranty services on goods sold in your state.		
8. The out-of-state corporation sends catalogs to residents in your state.		
9. Does your state have a <i>de minimis</i> standard? If "Yes," please explain, including whether the standard is based on the number of activities performed or the number of days that an activity is performed in your state.		
This question has been deleted for 2017.	X	X
10. Does your state apply the definition of "transacting business" or "doing business" used to determine whether an out-of-state corporation must register with the Secretary of State, or other similar agency, when determining whether the out-of-state corporation has nexus with your state?		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

B. Registration with State Agencies/Departments	2016 Response	2017 Response
The out-of-state corporation:		
1. is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.		
2. holds a general business license issued by your state.		
3. holds a specialty license issued by your state, such as a specialty insurance license.		
4. is registered with the state tax department for payroll tax purposes.		
5. is registered with the state agency or department that regulates or administers workers' compensation.		
6. is registered with the state as a government vendor or contractor.		
Comments: (Please indicate the question to which you are referring.)		

C. Ownership/Leasing of In-State Property	2016 Response	2017 Response
The out-of-state corporation:		
1. owns raw land.		
2. stores inventory or other goods in a public warehouse for fewer than 30 days per year.		
3. ships in-process inventory to an unrelated party in your state solely for processing.		
4. consigns goods to vendors, independent contractors, or other parties.		
5. owns display racks.		
6. owns tooling, molds, dies, etc., located at a manufacturing facility in your state.		
7. leases (as lessor) real estate in the state to an unrelated third party.		
8. leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in your state five or fewer times per year.		
9. owns or leases automobiles provided to salespersons.		
10. owns or leases trucks or automobiles used by non-salespersons.		
11. owns or leases other machinery or equipment.		
12. holds title to property located in your state until the contract price has been paid.		
13. files a security interest on inventory sold until the contract price has been paid.		
14. owns or leases a place for company employees, directors, and officers.		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

D. Ownership Interest of In-State Pass-Through Entities	2016 Response	2017 Response
The out-of-state corporation:		
1. owns an interest in an investment partnership or LLC that has operations in your state.		
2. owns a general interest in a partnership that is doing business in your state.		
3. owns a limited interest in a partnership that is doing business in your state.		
4. owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.		
5. owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.		
6. owns an interest in an entity located in your state that is disregarded for federal income tax purposes.		
7. owns a managing interest in an entity that limits its activities in your state to managing intangible investment assets that generate passive income.	NEW	
8. owns a limited interest in an entity that limits its activities in your state to managing intangible investment assets that generate passive income.	NEW	
9. owns a managing interest in an entity that limits its activities in your state to managing real property located in-state that generate passive income.	NEW	
10. owns a limited interest in an entity that limits its activities in your state to managing real property located in-state that generate passive income.	NEW	
Comments: (Please indicate the question to which you are referring.)		

E. Licensing Intangibles	2016 Response	2017 Response
The out-of-state corporation:		
1. licenses trademarks or trade names to related entities with locations in your state.		
2. licenses trademarks or trade names to unrelated entities with locations in your state.		
3. sells/licenses franchises (such as fast-food franchises) to residents of your state.		
4. licenses canned software to consumers in your state.		
5. receives a management fee from a related entity with a location in your state.		
6. receives a management fee from an unrelated entity with a location in your state.		
7. licenses to an in-state consumer permission to use its website for a webinar.		
8. sells/licenses the right to use a patent or copyright to related entities with locations in your state.		
9. sells/licenses the right to use a patent or copyright to unrelated entities with locations in your state.		
10. sells/rents customer lists to unrelated entities in your state.		
Comments: (Please indicate the question to which you are referring.)		

F. Employee Activities -- Sales Related	2016 Response	2017 Response
Employees of an out-of-state corporation, while in your state:		
1. accept and approve customer orders.		
2. negotiate prices, subject to approval outside your state.		
3. investigate credit-worthiness of customers.		
4. secure or accept deposits on sales.		
5. handle credit disputes.		
6. attend trade shows or maintain sample/display rooms for one to 14 days per year.		
7. maintain a two-month supply of free samples.		
8. check customers' inventories for reorder.		
9. make a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was de minimis).		
10. make a single sale on his or her own initiative and without the company's prior knowledge (assume that the sale was not de minimis).		
11. solicit sales of services in your state one to six days per year.		
12. perform a sales-related function and are reimbursed for the costs of maintaining an in-home office.		
13. operate mobile stores.		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

G. Employee Activities -- Non-Sales Related	2016 Response	2017 Response
Employees of an out-of-state corporation, while in your state:		
1. collect delinquent accounts.		
2. repossess property.		
3. regularly perform installation, repair, maintenance, or warranty services.		
4. perform installation, repair, or warranty services one to four times per year.		
5. set up promotional display of products (e.g., end caps, etc.) and inspect inventory.		
6. supervise or inspect installation.		
7. conduct training courses, seminars, or lectures two times per year.		
8. provide engineering or design functions related to customized products.		
9. handle customer complaints.		
10. pick up defective merchandise.		
11. pick up or replace damaged or returned property.		
12. provide shipping information and coordinate deliveries.		
13. telecommute from their homes located in your state. Assume that there are one to six such employees in your state and all of these employees perform non-solicitation activities. (In the Comments section below, please indicate if you would reach a different answer if the out-of-state corporation made no sales in your state, or if the employees telecommute for only part of their total work time.)		
13.(a) at least one employee telecommutes from a home located in your state and performs back-office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.		
13.(b) at least one employee telecommutes from a home located in your state and performs product development functions such as computer coding.		
14. assist the out-of-state corporation in defending a lawsuit (e.g., legal staff and witnesses) while in your state for one to 30 days.		
15. purchase raw materials and inventory while in your state for 20 or fewer days.		
16. attend seminars.		
17. attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for one to 14 consecutive days each year (assume that, during their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone or fax machines in your state).		
18. fly into your state on a commercial airline for business purposes one to four times per year.		
19. fly into your state on a commercial airline for business purposes five or more times per year.		
20. fly into your state on a company plane to attend a seminar.		
21. fly into your state on a company plane to attend sports events at least four times, but fewer than 10 times per year.		
22. attend seminars or social functions while staying on a company yacht docked in waters in your state for one to 14 days.		
23. hold job fairs, hiring events, or other recruiting activities.		
24. hire, supervise, or train other employees.		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

H. Activities of Unrelated Parties	2016 Response	2017 Response
Unrelated third parties located in your state:		
1. provide fulfillment services (i.e., fill product orders from corporate-owned inventory).		
2. collect regular or delinquent accounts.		
3. investigate credit-worthiness of new customers.		
4. repossess property one to six times a year.		
5. repair or provide maintenance, including warranty services, one to six times per year.		
6. assist with the "set-up" or installation of the company's products.		
7. perform repairs under standard or extended warranty.		
8. close mortgage loans for an out-of-state financial organization.		
9. service mortgage and/or consumer loans for an out-of-state financial organization.		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

I. Distribution and Delivery	2016 Response	2017 Response
The out-of-state corporation:		
1. ships products into your state in returnable containers.		
2. delivers goods into your state (from a point outside your state) to customers in the out-of-state corporation's owned or leased vehicles.		
3. picks up defective products or scrap materials in your state in taxpayer-owned vehicles.		
4. picks up raw materials in your state in taxpayer-owned vehicles.		
5. travels to or through your state one to six times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
6. travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
7. travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
8. "back hauls" (i.e., picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.		
9. holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).		
10. holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).		
This question has been deleted for 2017.	X	X
Comments: (Please indicate the question to which you are referring.)		

J. Financial Activities/Transactions	2016 Response	2017 Response
The out-of-state corporation:		
1. negotiates and obtains bank loans from a bank located in your state (assume officers of the out-of-state corporation visit the bank at least twice a year to discuss business).		
2. makes loans secured by real estate located in your state.		
3. makes personal loans secured by tangible property located in your state.		
4. issues credit cards to residents of your state.		
5. purchases, via the secondary market, loans secured by real estate located in your state.		
6. purchases, via the secondary market, credit account balances of residents of your state.		
7. makes personal loans to 20 or more residents of your state who traveled across the state border to obtain the loans.		
8. makes personal loans to 20 or more out-of-state residents who, over a number of years, subsequently move to your state.		
9. makes automobile loans to 20 or more out-of-state residents who, over a number of years, subsequently move to your state.		
10. is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States (assume a few of the debtors and some of the property securing the loans are located in your state).		
11. forecloses on one parcel of real estate located in your state.		
12. forecloses on several parcels of real estate located in your state.		
Comments: (Please indicate the question to which you are referring.)		

K. Transactions With In-State Printers	2016 Response	2017 Response
The out-of-state corporation:		
1. leases tangible personal property located at a printer in your state for use in connection with a printing contract (assume that, once the work is complete, the printer ships the printed material out of your state for addressing and mailing).		
2. owns raw materials at an in-state printer.		
3. visits in-state printers for quality control purposes one to six times per year.		
Comments: (Please indicate the question to which you are referring.)		

L. Cloud Computing or Software as a Service (SaaS) Transactions	2016 Response	2017 Response
Assume an out-of-state corporation provides access to software to customers in your state via a third party's cloud infrastructure. Customers pay a fee in return for a license to use the software. Please indicate whether nexus would result under the following scenarios. The out-of-state corporation:		
1. provides access to its software to in-state customers and pays independent contractors to perform configuration/set-up services in the state.		
2. provides access to its software to in-state customers and has employees solicit business in the state, and the sale IS one of tangible property protected under Pub. L. No. 86-272.		
3. provides access to its software to in-state customers and has employees solicit business in the state, and the sale is NOT one of tangible property protected under Pub. L. No. 86-272.		
4. provides access to its software to in-state customers and lacks a physical presence in the state, but has a substantial number of customers with billing addresses in the state.		
5. provides access to its software to in-state customers and lacks a physical presence in the state, but earns a substantial amount of revenue from customers in the state.		
6. rents space on a third-party server located in the state and lacks a physical presence in the state.		
Comments: (Please indicate the question to which you are referring.)		

M. Internet-Based Activities	2016 Response	2017 Response
The out-of-state corporation:		
1. owns an internet server located in your state.		
2. owns an internet server located in your state and hires third-party technicians located in your state to keep the server functioning.		
3. leases a third-party's internet server located in your state. Assume that the server is used exclusively by the out-of-state corporation.		
4. leases space on a third-party's internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.		
5. leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server in your state for less than six months during the year.		
6. leases space on a third-party's network of internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's internet server in your state for more than six months during the year.		
7. does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the out-of-state corporation web services to sell products over the internet.		
Comments: (Please indicate the question to which you are referring.)		
PLEASE INDICATE IF YOUR ANSWER DEPENDS ON WHETHER THE OUT-OF-STATE CORPORATION MADE SALES INTO YOUR STATE.		

Section III. State Tax Add-Backs		
A. State Policy	2016 Response	2017 Response
Please indicate whether the following taxes are allowed as deductions in arriving at your state's corporate income-based tax:		
1. State income-based taxes imposed by your state.		
2. State income-based taxes imposed by other states.		
3. Local income-based taxes imposed by in-state local governments.		
4. Local income-based taxes imposed by out-of-state local governments.		
5. Foreign taxes (other countries).		
6. State franchise taxes based on capital stock or net worth.		
7. State gross receipts taxes.		
8. District of Columbia Unincorporated Business Tax.		
9. Kentucky License Tax.		
10. New Hampshire Business Profits Tax.		
11. Washington Business and Occupation Tax.		
12. West Virginia Business and Occupation Tax.		
13. New York City Unincorporated Business Tax.		
Comments: (Please indicate the question to which you are referring.)		

B. Ohio Commercial Activity Tax (the Successor to the Franchise Tax)	2016 Response	2017 Response
Does your state require the add-back (<i>i.e.</i> , disallows the deduction) of amounts representing the payment of the Ohio CAT in arriving at your state's corporate-based income tax?		
Comments:		

C. Texas Margin Tax (the Successor to the Franchise Tax)	2016 Response	2017 Response
Does your state require the add-back (<i>i.e.</i> , disallows the deduction) of amounts representing the payment of the revised Texas Franchise Tax in arriving at your state's corporate-based income tax?		
Comments:		

Section IV. I.R.C. §338(h)(10) Elections

For federal tax purposes, sellers and purchasers may jointly elect under I.R.C. §338(h)(10) to treat a qualifying stock purchase as a sale of assets by a target subsidiary followed by a tax-free liquidation of the subsidiary under I.R.C. §332. Shareholders of a federal S corporation also may make such elections. The following questions concern your state's treatment of such transactions.

A. Conformity to the Election and Treatment	2016 Response	2017 Response
1. Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for regular (Subchapter C) corporations?		
2. Does your state conform to the federal treatment of I.R.C. §338(h)(10) elections for S corporations?		
3. Must a separate state election be made?		
4. If an election is made for federal tax purposes, can a taxpayer choose NOT to make the election for state tax purposes?		
5. If an election is NOT made for federal tax purposes, can a taxpayer choose to make the election for state tax purposes?		
Comments: (Please indicate the question to which you are referring.)		

B. Treatment of Gain	2016 Response	2017 Response
Assuming your state permits I.R.C. §338(h)(10) elections, is the gain from the deemed sale of assets recognized by the target subsidiary, treated as: (1) apportionable business income, (2) allocable nonbusiness income, or (3) depends on facts or circumstances?		
Comments:		

C. Apportionment Factors	2016 Response	2017 Response
1. Are the gross proceeds from the deemed sale of assets included in the target subsidiary's sales factor?		
2. If "no," is the net gain from the deemed sale included in the sales factor?		
3. Does your state require the gain and short-period income to be apportioned?		
4. If you answered "yes" to Question 3, above, please indicate below if the gain and short-period income is apportioned based on: (1) the apportionment factors for the short period, (2) the prior year's apportionment factors, or (3) other method (please specify below).		
If you selected other method, please specify:		
Comments: (Please indicate the question to which you are referring.)		

D. Filing Obligations	2016 Response	2017 Response
With respect to taxpayers filing consolidated federal returns, the short-period return for the target subsidiary is not due until the extended due date of the selling parent's return (in many cases, this is more than one year from the close of the target's short period).		
1. Do your state's filing requirements follow the federal rules?		
2. If "no," please indicate in the Comments section below when the target's short-period return is due.		
Comments: (Please indicate the question to which you are referring.)		

Section V. Bankruptcy Issues	2016 Response	2017 Response
This section has been deleted for 2017.	X	X

Section VI. Treatment of Intangible Holding Companies	2016 Response	2017 Response
Assume that an in-state corporation transfers ownership of an intangible asset (such as a patent or a trademark) to an out-of-state subsidiary whose only purpose is to hold the intangible asset. The in-state corporation deducts costs (such as royalties or management fees) relating to the right to use the subsidiary's patent or trademark. Check all of the following that would apply to your state in this situation:		
1. The in-state corporation would be required to add back the deduction for costs arising from the payments made to the subsidiary.		
2. If "yes" to question 1, the add back requirement would only apply to U.S. subsidiaries.		
3. If "yes" to question 1, the add back requirement would apply to both U.S. and non-U.S. subsidiaries.		
4. The in-state corporation and the out-of-state subsidiary would be required to report income to your state as a unitary group.		
5. The out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state by licensing intangible property to an in-state corporation.		
6. The out-of-state subsidiary's receipts would be taxed because it achieved nexus with your state based on its parent's activities.		
Comments: (Please indicate the question to which you are referring.)		

Section VII. Throwback/Throwout Rules	2016 Response	2017 Response
1. Does your state have a throwback rule (<i>i.e.</i> , does your state require corporations to include in the numerator of the sales factor sales attributable to a state in which the corporation is not subject to tax)?		
2. If your state has a throwback rule, does your state determine if the corporation is subject to tax based on:		
(a) your state's own nexus law.		
(b) the nexus law of the destination state.		
3. To be considered taxable in the destination state, must the corporation be able to prove that it filed a return and paid a tax to that state?		
4. For this purpose, does your state consider a corporation to be subject to tax in the other state if one of the members of the corporation's affiliated group is subject to tax in the other state?		
5. Does your state's throwback rule apply to sales made in foreign countries?		
6. Does your state have a throwout rule (<i>i.e.</i> , does your state require corporations to exclude from the denominator of the sales factor sales attributable to states in which the corporation lacks sufficient nexus to subject it to the state's income-based tax)?		
Comments: (Please indicate the question to which you are referring.)		

Section VIII. Sourcing Receipts		
A. Receipts from Sales of Tangible Personal Property	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing receipts from sales of tangible personal property by an out-of-state corporation.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
1. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is delivered or shipped to a purchaser within your state (destination-based sourcing).		
2. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor if the property is shipped from an office, store, warehouse, factory or other place of storage in your state (origin-based sourcing).		
3. Receipts from sales of tangible personal property are added to the numerator of the corporation's sales factor using a method other than destination-based sourcing or origin-based sourcing.		
If the response to question 3 is "yes," please explain below:		
Are receipts from sales of tangible personal property added to the numerator of the corporation's sales factor when:		
4. the property is delivered or shipped to a purchaser in your state and subsequently transferred by the purchaser to another state.		
5. the property is delivered or shipped to the ultimate recipient in your state at the purchaser's direction.		
6. the property is shipped from the state of origin to a consignee in another state and, while en route to the consignee, is diverted to a purchaser in your state.		
7. the property is shipped from a location in your state and the corporation is taxable in the purchaser's state.		
8. the property is shipped from a location in your state and the corporation is not taxable in the purchaser's state.		
9. the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is taxable.		
10. the property is sold by a salesperson operating from an office in your state to a purchaser in another state in which the corporation is not taxable and is shipped directly to the purchaser by a third party from a state in which the corporation is not taxable.		
Comments: (Please indicate the question to which you are referring.)		

B. Sales of Tangible Personal Property to the U.S. Government	2016 Response	2017 Response
1. Does your state provide special rules for sourcing sales of tangible personal property to the U.S. government?		
2. Are sales of tangible personal property to the U.S. government sourced to your state based on:		
(a) destination.		
(b) origin.		
(c) other.		
If you selected other, please specify:		
3. Receipts from sales of tangible personal property purchased by the U.S. Government are included in the numerator of the corporation's sales factor when:		
(a) the property is delivered or shipped to the purchaser in your state.		
(b) the property is shipped from an office, store, warehouse, factory or other place of storage in your state.		
Comments: (Please indicate the question to which you are referring.)		

C. Receipts from Leases, Licenses, or Rentals of Tangible Personal Property	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing receipts from the lease, license or rental of tangible personal property by an out-of-state corporation.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 8.)		
1. All of the receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if more income-producing activity is performed in your state than any other state, based on cost of performance (cost of performance sourcing, plurality method).		
2. A proportionate share of the corporation's receipts from the lease, license or rental of tangible personal property is added to the numerator of the corporation's sales factor on a <i>pro rata</i> basis, where the receipts are divided among the states in which the income-producing activity is performed, depending on the performance level in each state as measured by the costs of performance (cost of performance sourcing, proportionate method).		
3. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the benefit of the income-producing activity was received in your state (market-based sourcing).		
4. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state for the entire rental, lease or licensing period.		
5. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was used in your state for a portion of the rental, lease or licensing period.		

6. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state for the entire rental, lease or licensing period.		
7. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor if the property was located in your state for a portion of the rental, lease or licensing period.		
8. Receipts from the lease, license or rental of tangible personal property are added to the numerator of the corporation's sales factor based on something other than cost of performance, market, place of use, or location.		
If the response to question 8 is "Yes," please explain below:		
Comments: (Please indicate the question to which you are referring.)		

D. Receipts from Real Property	2016 Response	2017 Response
1. For purposes of sourcing an out-of-state corporation's receipts from real property, does your state source receipts from real property based on the location of the property? (IF THE RESPONSE IS "NO," PLEASE INDICATE THE METHOD YOUR STATE USES FOR SOURCING AN OUT-OF-STATE CORPORATION'S RECEIPTS FROM REAL PROPERTY IN THE COMMENTS SECTION BELOW.)		
Comments: (Please indicate the question to which you are referring.)		

E. Receipts from Services	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing receipts from sales of services by an out-of-state corporation. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 4.)		
1. All of the service receipts are added to the numerator of the service company's sales factor if more income-producing activity based on cost of performance is performed in your state than any other state (plurality method).		
2. A proportionate share of the service company's income is apportioned to the state on a <i>pro rata</i> basis, in which the company's sales are divided among the states in which it does business, depending on the performance level in each state as measured by costs of performance (proportionate method).		
3. A market-based sourcing approach is used in which sales receipts are sourced based upon the location of the market (market-based sourcing).		
4. Receipts from the provision of services are added to the numerator of the company's sales factor using a method other than costs of performance or market-based sourcing.		
If the response to question 4 is "yes," please explain below:		

Are receipts from the provision of services added to the numerator of the corporation's sales factor when:		
5. services are performed wholly in your state.		
6. services are performed both in your state and outside your state.		
7. services are performed wholly in your state by an agent or independent contractor on the company's behalf.		
8. services are performed in more than one state by an agent or independent contractor on the corporation's behalf and:		
(a) the company's contract with the contractor/agent indicates that the service will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.		
(b) the company's contract with the contractor/agent indicates where the service will be performed, but the company's contract with the customer indicates that the services will be performed in your state and determines the portion of company's payment to the contractor/agent associated with the service.		
(c) the company's contracts with the contractor/agent and the customer do not indicate where the service will be performed or the portion of the company's payment to the contractor/agent associated with the service, but the customer is domiciled in your state.		
9. services are performed by an agent or independent contractor on the company's behalf, and the location where the service will be performed by the agent/contractor, the portion of the company's payment to the contractor/agent associated with the service, and the customer's domicile cannot be determined.		
10. direct personal services are performed wholly in your state.		
11. direct personal services are performed both in your state and outside your state.		
12. direct personal services are received by an individual in the state.		
13. services, other than direct personal services, are received by an individual with an in-state billing address.		
14. services, other than direct personal services, are received by an individual with an out-of-state billing address.		
15. services with a substantial connection to a geographic location in your state are received by a business entity.		
16. services with a substantial connection to a geographic location both in your state and outside your state are received by a business entity.		
17. services with no substantial connection to a geographic location are received by a business entity and the business entity is commercially domiciled in your state.		
18. services are received by a business entity and:		
(a) the company's contract with the customer or the company's books and records kept in the normal course of business indicate that the benefit of the service is received in your state.		
(b) the company's contract with the customer or the company's books and records kept in the normal course of business indicate that the benefit of the service is received both in your state and outside your state.		
(c) the business entity placed the order for the service from a location in your state.		
(d) the business entity has an in-state billing address.		
Comments: (Please indicate the question to which you are referring.)		

F. Receipts From Intangibles	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts from intangible personal property by an out-of-state corporation.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
An out-of-state corporation must source receipts from sales of intangible personal property to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. other.		
If you selected other, please specify:		
Are receipts from intangible personal property added to the numerator of the corporation's sales factor when:		
4. the corporation sells the intangible only in your state.		
5. the corporation sells the intangible in your state and outside your state, and the intangible is sold more in your state than in any other state, based on costs of performance.		
6. the corporation sells the intangible in your state and outside your state, and the intangible is sold more outside your state than in your state, based on costs of performance.		
7. the intangible is used in your state at the time of sale.		
8. the intangible is used both in your state and outside your state at the time of sale.		
9. the corporation licenses, leases, rents or otherwise grants the use of an intangible that is used in your state.		
10. the corporation licenses, leases, rents or otherwise grants the use of an intangible that is used in your state and outside your state.		
11. the intangible is used in your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.		
12. the intangible is used both in your state and outside your state and the customer's payment is contingent on the productivity, use or disposition of the intangible.		
13. the intangible is used in marketing a good or service, and the good or service being marketed is purchased by an in-state consumer.		
14. the intangible is a contract right, government license or similar intangible authorizing the holder to conduct a business activity in a specific geographic area that is used in, or otherwise associated with, your state.		
Comments: (Please indicate the question to which you are referring.)		

G. Cloud Computing or Software as a Service (SaaS) Transactions	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing receipts from in-state customers that access an out-of-state corporation's software via a third party's cloud infrastructure.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 9.)		
1. Receipts from cloud computing or SaaS transactions are generally sourced to your state based on:		
(a) costs of performance		
(b) the location of the market.		
(c) other.		
If you selected other, please specify:		
2. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of tangible personal property?		
(IF THE ANSWER TO QUESTION 2 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 3(a) - (f).)		
3. If the response is "Yes" to question 2, above, are receipts from cloud computing or SaaS transactions sourced to your state when:		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.		
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.		
(c) the software is used in your state.		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.		
(f) other.		
If you selected other, please specify:		
4. Are receipts from cloud computing or SaaS transactions characterized as receipts from the lease, license or rental of tangible personal property?		
(IF THE ANSWER TO QUESTION 4 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 5(a) - (f).)		
5. If the response is "Yes" to question 4, above, are receipts from cloud computing or SaaS transactions sourced to your state when:		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.		
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.		
(c) the software is used in your state.		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.		
(f) other.		
If you selected other, please specify:		

6. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale, lease, license or rental of intangible personal property?		
(IF THE ANSWER TO QUESTION 6 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 7(a) - (f).)		
7. If the response is "Yes" to question 6, above, are receipts from cloud computing or SaaS transactions sourced to your state when:		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.		
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.		
(c) the software is used in your state.		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.		
(f) other.		
If you selected other, please specify:		
8. Are receipts from cloud computing or SaaS transactions characterized as receipts from the sale of services?		
(IF THE ANSWER TO QUESTION 8 IS "NO," PLEASE ENTER N/A FOR QUESTIONS 9(a) - (f).)		
9. If the response is "Yes" to question 8, above, are receipts from cloud computing or SaaS transactions sourced to your state when:		
(a) the income-producing activity is performed more in your state than in any other state, based on costs of performance.		
(b) the income-producing activity is performed more outside your state than in your state, based on costs of performance.		
(c) the software is used in your state.		
(d) the customer's billing address is in your state.		
(e) the customer's billing address is not in your state.		
(f) other.		
If you selected other, please specify:		
10. Does your state consider whether the software accessed is prewritten or custom computer software when characterizing its receipts?		
Comments: (Please indicate the question to which you are referring.)		

H. Banks and Financial Services Companies	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of an out-of-state bank or financial services company.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
An out-of-state bank or financial services company must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a bank or financial services company? (If your response is "yes," please explain in the Comments section below.)		
5. Does your state follow the <i>Multistate Tax Compact Recommended Formula for Apportionment and Allocation of Net Income of Financial Institutions</i> , or a substantially similar statute or regulation?		
6. Does your state impose a financial institutions tax on banks and financial services companies instead of the corporate income tax?		
Comments: (Please indicate the question to which you are referring.)		

I. Construction Contractors	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of a long-term construction contractor with income from both in-state and out-of-state sources.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
A long-term construction contractor must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a long-term construction contractor? (If your response is "yes," please explain in the Comments section below.)		
5. Does your state follow the <i>Multistate Tax Compact Special Industry Rules for Construction Contractors</i> in Reg. IV.18.(d), or a substantially similar statute or regulation?		
6. Are receipts from long-term construction projects sourced to your state when the project is located in your state?		
7. Are receipts from long-term construction projects sourced to your state when the project is located both in your state and outside your state?		
Comments: (Please indicate the question to which you are referring.)		

J. Telecommunications and Ancillary Service Providers	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of a telecommunications and ancillary service provider that is taxable both in your state and in one or more other states. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.) A telecommunications and ancillary service provider must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a telecommunications and ancillary service provider? (If your response is "yes," please explain in the Comments section below.)		
5. Does your state follow the Multistate Tax Compact Special Industry Rules for Telecommunications and Ancillary Services in Reg. IV.18.(i), or a substantially similar statute or regulation?		
6. Are receipts from sales of ancillary services sourced to your state when the ancillary services are primarily used by the customer in your state?		
7. Are receipts from sales of telecommunications or ancillary services sourced to your state when the services are sold as part of a bundled transaction?		
Comments: (Please indicate the question to which you are referring.)		

K. Trucking Companies	2016 Response	2017 Response
Indicate which of the methods below best describes your state's approach to sourcing the receipts of a trucking company with income from both in-state and out-of-state sources. (PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 4.) A trucking company must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. mileage.		
4. other.		
If you selected other, please specify:		

5. Does your state provide special rules for sourcing the receipts of a trucking company? (If your response is "yes," please explain in the Comments section below.)		
6. Does your state follow the <i>Multistate Tax Compact Special Industry Rules for Trucking Companies</i> in Reg. IV.18.(g), or a substantially similar statute or regulation?		
7. Are receipts from hauling freight, mail and express shipments sourced to your state when:		
(a) the shipment originates and terminates in your state.		
(b) the shipment passes through, into or out of your state.		
(c) the trucking company does not own or rent any real or personal property in your state, other than mobile property; make any pick-ups or deliveries in your state; or exceed a certain threshold of mobile property miles traveled in your state. (If your answer is "yes," please identify the threshold in the Comments section below.)		
Comments: (Please indicate the question to which you are referring.)		

L. Airlines	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of an airline with income from both in-state and out-of-state sources.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 4.)		
An airline must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. mileage.		
4. other.		
If you selected other, please specify:		
5. Does your state provide special rules for sourcing the receipts of an airline? (If your response is "yes," please explain in the Comments section below.)		
6. Does your state follow the <i>Multistate Tax Compact Special Industry Rules for Airlines</i> in Reg. IV.18.(e), or a substantially similar statute or regulation?		
7. Are receipts from the air transportation of passengers, cargo, freight or mail sourced to your state when:		
(a) the flight arrives in your state.		
(b) the flight departs from your state.		
(c) the flight passes through your state.		
Comments: (Please indicate the question to which you are referring.)		

M. Film, Television and Radio Broadcasting	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of a broadcasting company with income from both in-state and out-of-state sources.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 3.)		
A broadcasting company must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. other.		
If you selected other, please specify:		
4. Does your state provide special rules for sourcing the receipts of a broadcasting company? (If your answer is "yes," please explain in the Comments section below.)		
5. Does your state follow the <i>Multistate Tax Compact Special Industry Rules for Television and Radio Broadcasting</i> in Reg. IV.18.(h), or a substantially similar statute or regulation?		
6. Are receipts received by a broadcasting company sourced to your state when:		
(a) the receipts are from TV, film or radio programming in release to or by TV or radio stations in your state.		
(b) the receipts are from film programming in release to or by a cable TV system with subscribers in your state.		
(c) the broadcasting company's audience is in your state.		
Comments: (Please indicate the question to which you are referring.)		

N. Oil & Gas Pipelines	2016 Response	2017 Response
Please indicate which of the methods below best describes your state's approach to sourcing the receipts of an oil or gas pipeline company with income from both in-state and out-of-state sources.		
(PLEASE EXPLAIN IN THE COMMENTS SECTION BELOW IF YOU HAVE MORE THAN ONE "YES" ANSWER TO QUESTIONS 1 THROUGH 4.)		
A pipeline company must source receipts to your state based on:		
1. costs of performance.		
2. the location of the market.		
3. mileage.		
4. other.		
If you selected other, please specify:		
5. Does your state provide special rules for sourcing the receipts of a pipeline company? (If your answer is "yes," please explain in the Comments section below.)		
6. Are receipts from the transportation or transmission of oil or gas by pipelines sourced to your state when:		
(a) the transportation or transmission both originates and terminates in your state.		
(b) the transportation or transmission passes through, into or out of your state.		
Comments: (Please indicate the question to which you are referring.)		

O. Alternative Apportionment	2016 Response	2017 Response
1. If your state's alternative apportionment regime has been invoked, does the state have written regulations or guidelines on when the state or the taxpayer can use it? (If your response is "yes," please cite to the guidance in the Comments section below.)		
2. Does your state place the burden of proof on the party seeking to apply an alternative apportionment method?		
3. Does your state place the burden of proof on the taxpayer, without consideration as to which party is seeking to apply an alternative apportionment method?		
4. To invoke your state's alternative apportionment method, the taxpayer's burden of proof is clear and convincing evidence.		
5. To invoke your state's alternative apportionment method, the taxpayer's burden of proof is preponderance of the evidence.		
6. The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is clear and convincing evidence.		
7. The state's burden of proof for requiring a taxpayer to use an alternative apportionment method is preponderance of the evidence.		
Comments: (Please indicate the question to which you are referring.)		

P. State Conformity to the Multistate Tax Compact and Regulations	2016 Response	2017 Response
Please answer "Yes" or "No" to the questions below.		
1. Your state is a party to the Multistate Tax Compact (i.e., the Compact is currently a part of your state's enacted tax statutes). MTC MEMBER STATES ARE: AL, AK, AR, CO, DC, HI, ID, KS, MO, MT, NM, ND, OR, TX, UT, and WA.		
Does your state conform to:		
2. all effective material provisions of the Multistate Tax Commission's (MTC) Multistate Tax Compact (Articles I through XII), except for Article IX, Arbitration, which has never been implemented.		
3. Article III(1) of the Multistate Tax Compact (allowing taxpayer to elect to apportion and allocate income according to state law or according to Multistate Tax Compact Article IV).		
4. Article IV of the Multistate Tax Compact (UDITPA).		
5. the definition of "business income" in Article IV(1)(a) of the Multistate Tax Compact.		
6. the definition of "sales" in Article IV(1)(g) of the Multistate Tax Compact.		
7. the three-factor apportionment formula in Article IV(9) of the Multistate Tax Compact.		
8. the definition of "compensation paid in this State" in Article IV(14) of the Multistate Tax Compact.		
9. the definition of "sales of tangible personal property in this State" in Article IV(16) of the Multistate Tax Compact.		
10. the definition of "sales of other than tangible personal property in this State" in Article IV(17) of the Multistate Tax Compact.		
11. Article IV(18) of the Multistate Tax Compact regarding alternative apportionment.		

Adoption of MTC Multistate Tax Compact Article IV (UDITPA) Recommended Amendments, passed July 30, 2014		
12. Article IV.1(a) changing "business income" to "apportionable income" and expanding the definition and scope of what was formerly "business income" to all income that is apportionable under the U.S. Constitution.		
13. Article IV.1(g) changing "sales" to "receipts" and narrowing the definition of what was formerly "sales" to exclude hedging transactions and treasury receipts from the sales factor.		
14. Article IV. 17(a) moving from cost-of-performance to market-based sourcing for services and intangibles.		
Adoption of MTC Regulations for Multistate Tax Compact Article IV (UDITPA)		
15. MTC Allocation and Apportionment Regulation IV.1.(a)(3), (4), (5), and (6) (i.e., "Trade or Business," "Transactional Test," and "Functional Test").		
16. MTC Allocation and Apportionment Regulation IV.1.(b) "Principles for Determining the Existence of a Unitary Business."		
17. the 2007 amendment to the MTC Allocation and Apportionment Regulation IV.17(2) and (3) that expanded the definition of "business activity" to include "income producing activity performed on behalf of a taxpayer by an agent or independent contractor..."		
Comments: (Please indicate the question to which you are referring.)		

Section IX. Treatment of Pass-Through Entities		
A. Classification of Income	2016 Response	2017 Response
Your state:		
1. requires a partnership or multi-member LLC to classify its income as business or nonbusiness income at the entity level.		
2. requires a partnership or multi-member LLC to classify its income as business or nonbusiness income at the owner level.		
This question has been deleted for 2017.	X	X
This question has been deleted for 2017.	X	X
3. classifies guaranteed payments to nonresident partners for services, other than personal and professional services, performed in another state as business income.	NEW	
4. classifies guaranteed payments to nonresident partners for services, other than personal and professional services, performed in another state as nonbusiness income.	NEW	
5. classifies guaranteed payments to nonresident partners for personal and professional services performed in another state as business income.	NEW	
6. classifies guaranteed payments to nonresident partners for personal and professional services performed in another state as nonbusiness income.	NEW	
7. classifies guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business as business income.	NEW	
8. classifies guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business as nonbusiness income.	NEW	
9. uses a classification rule for purposes of distinguishing between business and nonbusiness income that differentiates between guaranteed payments for capital versus guaranteed payments for services.		
Comments: (Please indicate the question to which you are referring.)		

B. Apportionment	2016 Response	2017 Response
Your state:		
1. requires a partnership to apportion income at the entity level.		
2. requires a partnership to apportion income at the owner level.		
3. requires transactions between the owners and the partnership to be eliminated before income is apportioned.		
4. requires sales receipts from a partnership owned by individuals to be sourced in the same manner as receipts from a partnership owned by a corporation.		
5. requires apportionment of guaranteed payments to nonresident partners for services, other than personal and professional services , performed in another state.		
6. requires apportionment of guaranteed payments to nonresident partners for personal and professional services performed in another state .	NEW	
7. requires apportionment of guaranteed payments to nonresident partners for the use of their partnership capital in the states where the partnership does business.		
8. requires partnerships to apportion their income using the same apportionment rules used by corporations.		
9. requires partnerships to apportion their income using apportionment rules for pass through entities instead of the apportionment rules used by corporations.		
Comments: (Please indicate the question to which you are referring.)		

C. Disposition of Pass-Through Entity Interest (New for 2017)	2016 Response	2017 Response
Your state imposes income tax on the gain recognized by the disposition of:		
1. an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state.	NEW	
2. a nonresident individual's managing ownership interest of a pass-through entity doing business in your state.	NEW	
3. an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state.	NEW	
4. a nonresident individual's limited ownership interest of a pass-through entity doing business in your state.	NEW	
5. an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation comprise a unitary business.	NEW	
6. an out-of-state corporation's managing ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation are nonunitary.	NEW	
7. an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation comprise a unitary business.	NEW	
8. an out-of-state corporation's limited ownership interest of a pass-through entity doing business in your state when the pass-through entity and corporation are nonunitary.	NEW	
Comments: (Please indicate the question to which you are referring.)		

D. Composite Returns and Withholding	2016 Response	2017 Response
Your state:		
1. requires pass-through entities doing business in your state to file composite returns for nonresident individuals who are owners/members/partners.		
2. requires pass-through entities doing business in your state to file composite returns for out-of-state corporations who are owners/members/partners.		
3. requires pass-through entities doing business in your state to withhold estimated tax on distributive share payments made to nonresident individuals who are owners/members/partners.		
4. requires pass-through entities doing business in your state to withhold estimated tax on distributive share payments made to out-of-state corporations that are owners/members/partners.		
5. requires nonresident owners/members/partners subject to withholding or composite return requirements to file a return to receive a refund of any amounts over-withheld.	NEW	
Comments: (Please indicate the question to which you are referring.)		

Section X. Combined Reporting		
A. Composition of the Combined Reporting Group	2016 Response	2017 Response
Your state:		
1. uses a "unitary business" definition to determine which entities must be included within a combined group.		
2. looks to an "ownership threshold" to determine which entities must be included within a combined group.		
3. uses some other standard in addition to, or instead of, the "unitary business" definition or "ownership threshold." (If your response is "yes," please set forth the standard(s) in the Comments section below.)		
4. uses water's-edge reporting (nexus only, all unitary members) as the default method for determining the composition of a combined group.		
5. uses worldwide reporting (all unitary members) as the default method for determining composition of a combined group.		
6. requires the exclusion from the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.		
7. requires the inclusion in the unitary business group members whose business activity outside the United States is 80 percent or more of the member's total business activity.		
8. requires an entity doing business in a tax haven, as defined by your state, to be included within a water's-edge group.		
9. requires an entity that is foreign, but derives income from intangibles, to be included within a water's-edge group.		
10. prohibits including within the combined group related entities that use an industry-specific apportionment formula.		
11. requires including within the combined group related entities that use an industry-specific apportionment formula.		
12. offers elective provisions to a combined group such as allowing the group to determine whether to be comprised on a water's-edge or worldwide basis. (If your response is "yes," please set forth the election(s) in the Comments section below.)		
Comments: (Please indicate the question to which you are referring.)		

B. Combined Reporting: Tax Base	2016 Response	2017 Response
Your state:		
1. computes the income tax liability of the group on an aggregate basis and allows members to share tax credits between one another.		
2. computes the income tax liability of the group on an aggregate basis and allows members to offset losses between one another.		
3. conforms to the "matching rule" under U.S. Treas. Regs. §1.1502-13 (i.e., intercompany transactions shall be taken into account as if the seller and buyer were divisions of a single corporation).		
4. conforms to the "acceleration rule" under U.S. Treas. Regs. §1.1502-13 (i.e., intercompany items shall be taken into account when the effect of treating the seller and buyer as divisions of a single corporation cannot be achieved, such as when either the seller or buyer leaves the combined reporting group).		
Comments: (Please indicate the question to which you are referring.)		

C. Combined Reporting: Apportionment	2016 Response	2017 Response
Your state:		
1. includes in the numerator of the combined group's sales factor the in-state sales of a no nexus combined group member, notwithstanding Pub. L. No. 86-272 (i.e., <i>Finnigan</i> approach).		
2. does not include in the sales factor numerator sales by a no nexus combined group member for purposes of determining taxable income in your state for the other group members (i.e., <i>Joyce</i> approach).		
3. eliminates intercompany transactions (receipts, rents, etc.) from the apportionment factors.		
Comments: (Please indicate the question to which you are referring.)		

Section XI. Tax Treatment of Non-U.S. Entities	2016 Response	2017 Response
1. Does your state apply the same nexus standard to non-U.S. entities as it does to domestic entities?	NEW	
2. Does your state extend the protections under Pub. L. No. 86-272 to business entities that are not organized under the law of a state or local taxing jurisdiction in the U.S. (i.e., a foreign corporation not eligible for Pub. L. No. 86-272 protections)?		
3. Does your state, when determining the state taxable income of a non-U.S. entity, permit federal income tax treaty exemptions or other limits to control liability for state income taxation (i.e., the non-U.S. entity will only have state taxable income if it has a "permanent establishment" in the U.S. and reports income on Federal Form 1120-F)? (If your response is "no," please describe your state's method for computing tax in the Comments section below.)		
4. Does your state require a non-U.S. entity that is not subject to federal income tax, but subject to your state's income-based tax, to compute your state's tax by first completing a "pro forma" federal tax return or computation of federal income?		
5. Does your state require a non-U.S. entity that is not subject to federal income tax, but subject to your state's income-based tax, to use a starting point in determining state taxable income other than federal taxable income (i.e., \$0)?		
6. Does your state impose tax on a non-U.S. entity's apportioned worldwide taxable income?		
7. Does your state determine the source of income for purposes of determining taxability of nonbusiness income by using the federal source rules under I.R.C. § 861 et seq.? (If your response is "no," please indicate your state's rule in the Comments section below.)		
8. Does your state use federal source rules to determine the non-US income of an 80-20 corporation for water's edge or other purposes?		
9. Does your state impose tax only on the income of the U.S. branch of a non-U.S. entity?		
10. Does your state impose income tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?		
11. If a foreign business does not file a federal return within a specified period of time after its due date (usually 18 months after the original due date), federal deductions are denied. Does your state follow a similar rule? (Please indicate in the Comments section below if the higher federal income starting point serves as the equivalent of the state's penalty.)		
12. Does your state impose franchise tax or other non-income based tax on a non-U.S. entity that is not subject to federal income taxation and only files federal Form 1120F?		
13. Does your state conform to the federal treatment of effectively connected income under I.R.C. §§ 881 and 882?	NEW	
Comments: (Please indicate the question to which you are referring.)		

Section XII. Reporting Federal Changes		
A. IRS Audit Reportable Adjustments After Your State's Normal Statute of Limitations Expires	2016 Response	2017 Response
Please indicate whether or not each of the following constitutes a reportable adjustment after your state's normal statute of limitations has expired.		
1. Signing IRS Form 870 (Waiver of Restrictions on Assessment & Collection of Deficiency in Tax and Acceptance of Over Assessment) for only one audit when other audit issues are still under review by the IRS.		
2. Any partial settlement of federal tax issues as they are reported/paid to the IRS.		
3. Form 4549-A, Income Tax Discrepancy Report.		
4. Form 886-A, Explanation of Adjustments.		
5. Final federal tax changes (i.e., all appeals exhausted).		
6. Would your answer to any of the questions above change in cases involving a refund of federal taxable income? (If your response is "yes," please indicate which question or questions would change in the Comments section below.)		
7. Does your state have written guidance on what constitutes a final federal tax change? (If your response is "yes," please cite to the guidance in the Comments section below.)		
Comments: (Please indicate the question to which you are referring.)		

B. Other Reportable Adjustments After Your State's Normal Statute of Limitations Expires	2016 Response	2017 Response
Please indicate whether or not each of the following constitutes a reportable adjustment after your state's normal statute of limitations has expired.		
1. Other state tax changes.		
2. Other local tax changes.		
3. Changes to financial statements (e.g., net worth).		
4. Changes by foreign governments.		
5. A federal change (e.g., certain federal tax credits) that has no impact on an entity's tax liability in your state.		
Comments: (Please indicate the question to which you are referring.)		

C. Adequate Notice of Reportable Adjustment	2016 Response	2017 Response
For purposes of starting the state's statute of limitations for issuing an assessment, what constitutes adequate notice of a reportable adjustment?		
1. Notice is only made when a taxpayer actually files an amended return.		
2. Notice may be made when a taxpayer files some type of notice in writing to your agency (e.g., a document submitted to an auditor without filing an amended tax return).		
3. Notice is imputed to the tax agency from the date the IRS or another jurisdiction provides information to the agency.		
Comments: (Please indicate the question to which you are referring.)		

Section XIII. Sales Tax Nexus Policies	
A. Please identify any statute, regulation, or administrative pronouncement that sets forth your state's sales tax nexus policy.	
Statute(s) addressing sales tax nexus:	
Regulation(s) addressing sales tax nexus:	
Administrative pronouncement(s) addressing sales tax nexus:	
Judicial decision(s) addressing sales tax nexus:	

B. Nexus Enforcement Policies	2016 Response	2017 Response
Your state:		
1. sends a nexus questionnaire to corporations that it believes might be doing business within its borders. If "Yes," please indicate the form number in the Comments section below.	NEW	
2. would find taxable nexus for the entire taxable year (but no more), for a corporation that stops an activity during the tax year that once created nexus (i.e., trailing nexus).		
3. would find taxable nexus for the entire taxable year, plus an additional year (and no more), for a corporation that stops an activity during the tax year that once created nexus (i.e., trailing nexus).		
4. would find taxable nexus for the taxable year, plus more than an additional year, for a corporation that stops an activity during the tax year that once created nexus (i.e., trailing nexus).		
5. Do your answers to questions 2 - 4 on "trailing nexus," depend on the magnitude of the nexus-creating activity (e.g., three salesperson visits resulting in the sale of a used car, versus three CEO visits resulting in the sale of a petroleum super tanker)?		
If your answer to question 5 is "yes," please explain:		
Comments: (Please indicate the question to which you are referring.)		

C. Sourcing and Method of Delivery	2016 Response	2017 Response
In transactions that take place across more than one jurisdiction, sourcing rules are used to determine the place of the sale and what jurisdiction is entitled to the tax generated from a particular transaction. The following questions are aimed at determining your state's sourcing rules for transactions in which either a buyer or seller is located in a different state or local jurisdiction within your state.		
1. For interstate transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale?		
2. For intra-state transactions, does your state use a destination-based sourcing method in which the location the consumer takes delivery of the tangible personal property is the place of sale? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
3. For interstate transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale?		
4. For intra-state transactions, does your state use an origin-based sourcing method in which the location the vendor receives the order for the good or service is the place of sale? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
5. For interstate transactions, does your state source services such as repairs to the location where the repairs were made?		
6. For intrastate transactions, does your state source services such as repairs to the location where the repairs were made? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
7. For interstate transactions, does your state source services such as repairs to the location where the buyer regains possession of the repaired item?		
8. For intrastate transactions, does your state source services such as repairs to the location where the buyer regains possession of the repaired item? (IF LOCAL SALES TAX IS NOT IMPOSED IN YOUR STATE, PLEASE RESPOND "N/A.")		
9. Does the method by which an item is delivered from a remote seller to a purchaser in your state affect whether the item is taxed as tangible personal property (e.g., canned software delivered on a DVD or CD ROM versus electronic download)?		
10. Are amounts paid by in-state customers to remotely access canned or prewritten software that is hosted on a server subject to sales or use tax in your state?		
11. Please indicate which method your state uses to source amounts paid for canned or prewritten software that is accessed, but not delivered to a customer in your state: (a) by the location of the server; (b) by the customer's billing address; (c) by where the software is used; or (d) other.		
If you selected other, please specify: 		
Comments: (Please indicate the question number to which you are referring.) 		

D. Sharing Economy (New for 2017)	2016 Response	2017 Response
1. For transactions for the provision of transportation services for passengers that are arranged by a third party vendor (e.g., Uber or Lyft), does your state impose the tax collection obligation on the third party vendor?	NEW	
2. For transactions for the provision of short-term accommodations that are facilitated by a third party (e.g., Airbnb), does your state impose the tax collection obligation on the third party?	NEW	
3. For transactions for the provision of short-term accommodations that are facilitated by a third party (e.g., Airbnb), does your state impose the tax collection obligation on the owner of the accommodations?	NEW	
4. For transactions for the short-term rental of owners' vehicles facilitated by a third party (e.g., GetAround, RelayRides), does your state impose the tax collection obligation on the third party?	NEW	
5. For transactions for the short-term rental of owners' vehicles facilitated by a third party (e.g., GetAround, RelayRides), does your state impose the tax collection obligation on the owner of the vehicle?	NEW	
Comments: (Please indicate the question number to which you are referring.)		

Section XIV. Sales Tax Nexus Creating Activities

Please indicate "Yes" or "No" to show whether each of the following activities or relationships performed by an out-of-state corporation would, by itself, create substantial nexus with your state for purposes of triggering the imposition of sales tax collection requirements on the out-of-state corporation. When determining whether the listed activity/relationship would create substantial nexus, assume that each item is the only activity/relationship the out-of-state corporation has in your state. Also assume that the out-of-state corporation has no property or employees located in your state.

A "Yes" response means that an out-of-state corporation's performance of the listed activity/relationship would, by itself, create substantial nexus and trigger the imposition of sales tax collection requirements on the out-of-state corporation. A "No" response means that an out-of-state corporation's performance of the listed activity/relationship would not, by itself, trigger nexus for purposes of your state's sales tax.

For the questions that you believe require more than a "Yes" or "No" answer, please set forth in the comments section the factors that your state would consider in making a nexus determination.

A. General Activities	2016 Response	2017 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. reimburses its in-state salespersons for the costs of maintaining an in-home office.		
2. maintains a bank account in your state.		
3. maintains a post office box in your state.		
4. is listed in the local telephone books of cities in your state.		
5. uses local phone numbers in your state, which are forwarded to its headquarters in another state.		
6. makes sales to customers in your state by means of an 800 telephone order number and advertises in your state.		
Comments: (Please indicate the question number to which you are referring.)		

B. Remote Sales	2016 Response	2017 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. has an employee visit your state four or more times during the year.		
2. authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in the state.		
3. authorizes an employee or third party (e.g., independent contractor, affiliated company, or other representative) to install, deliver, service, or repair merchandise in your state.		
4. uses an employee or third party (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in your state.		
5. delivers merchandise to customers in your state in company-owned vehicles or by means other than common carrier or the U.S. Postal Service.		
6. delivers merchandise to customers in your state in returnable containers.		
7. ships its products for distribution to a third-party distributor located in the state that performs functions such as labeling, packaging, and shipping.		
8. provides in-state telephone or internet kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.		
Comments: (Please indicate the question number to which you are referring.)		

C. Temporary or Sporadic Presence	2016 Response	2017 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. attends or participates in trade shows held in your state, and:		
(a) makes no sales and takes no orders at the trade show.		
(b) makes sales and/or accepts orders at the trade show.		
(c) limits trade show activities in the state to one to five days annually.		
2. sells tangible personal property while temporarily located in your state for up to three days.		
3. has employees or representatives occasionally enter the state to meet with in-state suppliers of goods or services.		
4. makes remote sales of tangible personal property to state residents and holds two or more one-day seminars in the state.		
5. makes remote sales of tangible personal property to state residents, holds two or more one-day seminars in the state, and has its employees visit the state five times during the year.		
6. enters your state solely for purposes of conducting disaster relief operations.	NEW	
Comments: (Please indicate the question number to which you are referring.)		

D. Activities of Unrelated Parties	2016 Response	2017 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. hires independent contractors to perform warranty or repair services on tangible personal property located in your state.		
2. hires an unaffiliated printer in the state and stores raw materials or finished goods at the in-state printer's plant.		
3. hires an unrelated call center or fulfillment center located in your state to process telephone and electronic orders that primarily derive from out-of-state customers.		
4. enters into an advertising contract with a cable station, radio station, print publication or electronic publication that is located in your state.		
5. produces an infomercial that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to in-state consumers who made purchases using the phone number or website address displayed on the "infomercial."		
6. collects delinquent accounts using a collection agency in your state or hires attorneys or other third parties to file collection suits in courts in your state.		
7. uses a company in your state to drop ship merchandise to customers.		
8. stores and ships items from an unrelated distribution center located in your state.		
Comments: (Please indicate the question number to which you are referring.)		

E. Financial Activities	2016 Response	2017 Response
The out-of-state corporation sells tangible personal property to residents in your state from outside the state (e.g., by telephone, over the internet, via catalog/direct mail, or otherwise) and:		
1. issues credit cards to customers who reside in your state.		
2. owns an interest in an investment partnership or LLC that has operations in your state.		
3. owns a general interest in a partnership that is doing business in your state.		
4. owns a limited interest in a partnership that is doing business in your state.		
5. owns an interest in an LLC that is doing business in your state and is involved in managing the LLC.		
6. owns an interest in an LLC that is doing business in your state, but is not the managing member or otherwise involved in managing the LLC.		
Comments: (Please indicate the question number to which you are referring.)		

F. Activities with Affiliates	2016 Response	2017 Response
The out-of-state corporation:		
1. is affiliated with an entity that sells tangible personal property or services to customers in your state, and:		
(a) the in-state affiliate sells similar merchandise and uses common trade names, trademarks or logos.		
(b) uses the in-state affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf.		
(c) sells tangible personal property over the internet or by catalog and has an affiliated company that operates a retail store in your state.		
(d) sells tangible personal property over the internet or by catalog to residents of your state and participates in a loyalty points program with the in-state affiliate, allowing customers to earn points for purchases from the out-of-state corporation and redeem the points for merchandise at the affiliate's in-state stores.		
2. sells gift cards in affiliated in-state stores.		
3. makes remote sales to residents of your state and owns less than 5 percent of an in-state affiliate that shares the out-of-state corporation's logo.		
4. makes remote sales to residents of your state and owns at least 5 percent of an in-state affiliate that shares the out-of-state corporation's logo.		
5. makes remote sales to residents of your state and accepts returned items or exchanges items that were purchased from an affiliate's in-state stores.		
6. makes remote sales to residents of your state and is part of a controlled group with an affiliated entity that is physically located in your state.		
Comments: (Please indicate the question number to which you are referring.)		

G. Internet Activities	2016 Response	2017 Response
The out-of-state corporation:		
1. Uses an Internet link or enters into an affiliation linking arrangement with a third party that:		
(a) is located in your state.		
(b) maintains a website on a server that is located in your state.		
2. makes remote sales of tangible personal property to residents in your state from outside the state via a website and enters into an agreement with residents of your state in which the out-of-state corporation pays commissions or fees for referrals to the out-of-state corporation's website. Assume the annual gross receipts from sales attributable to the arrangements total LESS THAN \$10,000.		
3. makes remote sales of tangible personal property to residents of your state outside the state via a website and enters into an agreement with residents of your state in which the out-of-state corporation pays commissions or fees for referrals to the out-of-state corporation's website. Assume the out-of-state corporation's annual gross receipts from the sales attributable to the arrangements total AT LEAST \$10,000.		
4. is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time the advertisement is displayed (per impression).		
5. is an Internet-based retailer with an out-of-state home office and enters into an agreement with an in-state operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid when a consumer clicks on the advertisement and buys a product from the out-of-state retailer (per conversion).		
6. makes remote sales of tangible personal property in your state and:		
(a) owns an Internet server located in your state.		
(b) owns an Internet server located in your state and hires third-party technicians located in your state to keep the server functioning.		
(c) leases a third-party's Internet server located in your state. Assume that the server is used exclusively by the out-of-state corporation.		
(d) leases space on a third-party's Internet server located in your state. Assume that space on the third-party's server is also leased to several other unrelated corporations.		
(e) leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's Internet server in your state for less than six months during the year.		
(f) leases space on a third-party's network of Internet servers, some of which are located in your state. Assume that the out-of-state corporation's data is on the third-party's Internet server for more than six months during the year.		
(g) does not own or lease property in your state, but pays a web-hosting provider with a server located in your state to provide the out-of-state corporation web services to sell products over the Internet.		
Comments: (Please indicate the question number to which you are referring.)		

H. Activities Related to Digital Property	2016 Response	2017 Response
The out-of-state corporation:		
1. makes remote sales of digital content, such as e-books, music, TV shows and movies, that is downloaded by residents of your state.		
2. makes remote sales of digital content, such as e-books, music, TV shows and movies, that is accessed electronically, but not downloaded, by residents of your state.	NEW	
3. electronically provides canned software to residents in your state and then makes remote sales of digital content, such as music and videos, that are downloaded by residents of your state.		
4. makes remote sales of canned software to residents in your state and then sends a representative to customize it to meet the customer's specific needs.		
5. makes remote sales of customized software in your state.		
6. owns licenses to canned software that are purchased by residents of your state.		
7. licenses to an in-state consumer permission to use its website for a webinar.		
8. sells data, such as music files, to residents in your state, and the data is stored on a server located in your state.		
9. sells remote access to canned software to customers located in your state.		
10. sells digital magazine or newspaper subscriptions from a remote Internet platform to an in-state user who downloads the material in your state.		
11. makes remote sales of appliances equipped with control devices from which an in-state user can control the appliance via a remote Internet platform.		
Comments: (Please indicate the question to which you are referring.)		

I. Distribution and Delivery	2016 Response	2017 Response
The out-of-state corporation makes remote sales into your state and:		
1. picks up defective products or scrap materials in your state in company-owned vehicles.		
2. picks up raw materials in your state in company-owned vehicles.		
3. travels to or through your state one to six times per year in company-owned trucks, but does not pick up or deliver goods in your state.		
4. travels to or through your state more than six times, but no more than 12 times, per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
5. travels to or through your state more than 12 times per year in taxpayer-owned trucks, but does not pick up or deliver goods in your state.		
6. "back hauls" (i.e. , picks up shipments at the destination or nearby location for delivery to another point) in corporate-owned trucks.		
7. holds title to electricity flowing through a transmission wire within your state (the transmission neither originates nor terminates in your state).		
8. holds title to natural gas flowing through a pipeline within your state (the natural gas neither originates nor terminates in your state).		
9. delivers goods into your state via contract carrier.		
Comments: (Please indicate the question to which you are referring.)		

J. Third-Party Solicitation Activities and Attributional Nexus	2016 Response	2017 Response
The corporation makes remote sales into your state and hires a third party to:		
1. distribute flyers, coupons and other printed promotional materials.		
2. distribute electronic equivalents of flyers, coupons and other printed promotional materials via e-mail or other electronic means.		
3. solicit sales in-person.		
4. solicit sales by telephone.		
5. demonstrate a product in person.		
6. negotiate prices to buy.		
7. negotiate prices to sell.		
8. refer a customer via website or blog click-through in exchange for a percentage of the sale.		
9. advertise a product on in-state website or blog, but with no click-through to buy.		
10. post informational content on in-state websites or blogs.		
11. employ search engine optimization techniques, such as generating targeted advertisements based on specific searches.		
Comments: (Please indicate the question to which you are referring.)		

K. Transactions Involving Franchise Agreements	2016 Response	2017 Response
The out-of-state corporation licenses intangible property to an in-state franchisee and the out-of-state corporation:		
1. owns only intangible property such as trademarks in your state.		
2. makes one inspection visit to the franchisee's location per year.		
3. makes two to six inspection visits to the franchisee's location per year.		
4. makes more than six inspection visits to the franchisee's location per year.		
5. leases machinery and equipment worth \$20,000 to the franchisee.		
6. leases machinery and equipment worth \$100,000 to the franchisee.		
7. maintains and repairs the franchisee's equipment in your state.		
Comments: (Please indicate the question to which you are referring.)		

L. Service Providers	2016 Response	2017 Response
The out-of-state corporation:		
1. repairs tangible personal property in another state and delivers it by common carrier to an in-state customer (assume the repair services are taxable in your state).		
2. provides a taxable service to an in-state customer in which no part of the service, including the tangible personal property that is incidental to the performance of the taxable service, is physically transferred to the in-state customer.		
3. provides a taxable service to an in-state customer in which tangible personal property that is incidental to the performance of the service is physically transferred (i.e., by common carrier) to the in-state customer.		
4. transfers documents that are incidental to the performance of a taxable service to an in-state customer by electronic means only.		
5. has employees that regularly (e.g., 12 or more times per year) enter the state to deliver to in-state customers tangible personal property that is incidental to the performance of a taxable service.		
6. has employees occasionally (e.g., one to 11 times per year) enter the state to deliver to an in-state customer tangible personal property that is incidental to the performance of a taxable service.		
7. uses a third party in your state to store tangible personal property that is transferred by the corporation to in-state customers as an incidental part of the performance of a taxable service.		
Comments: (Please indicate the question to which you are referring.)		

M. Cloud Computing	2016 Response	2017 Response
<p>(If the fees addressed in any of the following questions are not taxable in your state, please answer "N/A" and note it in the Comments section below.)</p>		
<p>The out-of-state corporation:</p>		
<p>1. charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state.</p>		
<p>2. charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state and remotely performs a taxable service in your state.</p>		
<p>3. sends an employee to your state to perform an initial setup and then charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state.</p>		
<p>4. hires an independent contractor in your state to provide training to in-state customers and charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state.</p>		
<p>5. charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state and occasionally (e.g., one to 11 times per year) has employees meet with customers in your state.</p>		
<p>6. charges fees to in-state customers for the right to access non-downloadable prewritten software that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.</p>		
<p>7. charges fees to in-state customers for the right to access information on its website that is hosted on a server in another state.</p>		
<p>8. charges fees to in-state customers for the right to access information on its website that is hosted on a server in another state and remotely performs a taxable service in your state.</p>		
<p>9. sends an employee in your state to perform an initial set up and then charges fees to in-state customers for the right to access information on its website that is hosted on a server in another state.</p>		
<p>10. hires an independent contractor in your state to provide training to in-state customers and then charges fees for the right to access information on its website that is hosted on a server in another state.</p>		
<p>11. charges fees to in-state customers for the right to access information on its website that is hosted on a server in another state and occasionally (e.g., one to 11 times per year) has employees meet with customers in your state.</p>		
<p>12. charges fees to in-state customers for the right to access information on its website that is hosted on a server in another state and regularly (e.g., 12 or more times per year) has employees meet with customers in your state.</p>		
<p>Comments: (Please indicate the question to which you are referring.)</p>		
<p></p>		

N. Registration with State Agencies/Departments	2016 Response	2017 Response
The out-of-state corporation:		
1. is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in your state as a foreign corporation.		
2. holds a general business license issued by your state.		
3. holds a specialty license issued by your state, such as a specialty insurance license.		
4. is registered with the state tax department for payroll tax purposes.		
5. is registered with the state agency or department that regulates or administers workers' compensation.		
6. is registered with the state as a government vendor or contractor.		
Comments: (Please indicate the question to which you are referring.)		

O. Drop Shipment Transactions	2016 Response	2017 Response
The out-of-state corporation:		
1. is a manufacturer that ships tangible personal property via common carrier to in-state customers based on orders received from a distributor, and		
(a) the distributor has nexus with your state.		
(b) the distributor does not have nexus with your state.		
2. is a distributor that uses an in-state manufacturer, who acts as a fulfillment agent in your state, to pack and ship orders via common carrier to in-state customers, and		
(a) the manufacturer holds title to the inventory until the corporation directs the manufacturer to ship the order.		
(b) the corporation holds title to the inventory until the corporation directs the manufacturer to ship the order.		
3. is a distributor that contracts with an in-state manufacturer to perform an order fulfillment service on the corporation's behalf in which the manufacturer accepts phone and mail orders addressed to the corporation, processes payments made payable to the corporation and packages and ships inventory via common carrier to the corporation's customers, and		
(a) the manufacturer holds title to the inventory prior to shipment.		
(b) the corporation holds title to the inventory prior to shipment.		
4. is a distributor that contracts with an in-state manufacturer to accept and process product returns on the corporation's behalf, including evaluating products for defects, crediting the customer and maintaining the product inventory, and		
(a) the corporation charges product return inventory back to the manufacturer such that the manufacturer owns the returned inventory.		
(b) the corporation retains ownership of the product return inventory.		
Comments: (Please indicate the question to which you are referring.)		

Section XV. Refund Claims, Qui Tam and Class Action Lawsuits		
A. Refund Claims	2016 Response	2017 Response
Your state:		
1. requires vendors that obtain sales tax refunds to refund the tax to their purchasers.		
2. permits purchasers to seek sales tax refunds directly from the state for over-collected tax remitted by their vendors.		
Comments: (Please indicate the question to which you are referring.)		

B. Qui Tam and Class Action Lawsuits	2016 Response	2017 Response
Your state:		
1. has a false claims act under which a private party, acting as relator on behalf of the state, may bring a lawsuit against a taxpayer for underpaying tax.		
2. has a consumer protection law under which purchasers may bring class action lawsuits against vendors for over-collected sales or use tax.		
3. permits vendors to prove that they remitted allegedly over-collected sales tax as an affirmative defense to over-collection claims.		
Comments: (Please indicate the question to which you are referring.)		

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