



# 2023 Legislative Outlook Conference Utah Taxpayers Association

## 2022 State and Local Business Tax Burden Report & Mobile Workforce Issues

January 10, 2023

*Stephanie Do*

*Senior Tax Counsel*

*Council On State Taxation*

[sdo@cost.org](mailto:sdo@cost.org)



# About COST

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

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

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

# Recent State Tax Research Institute (STRI) Studies

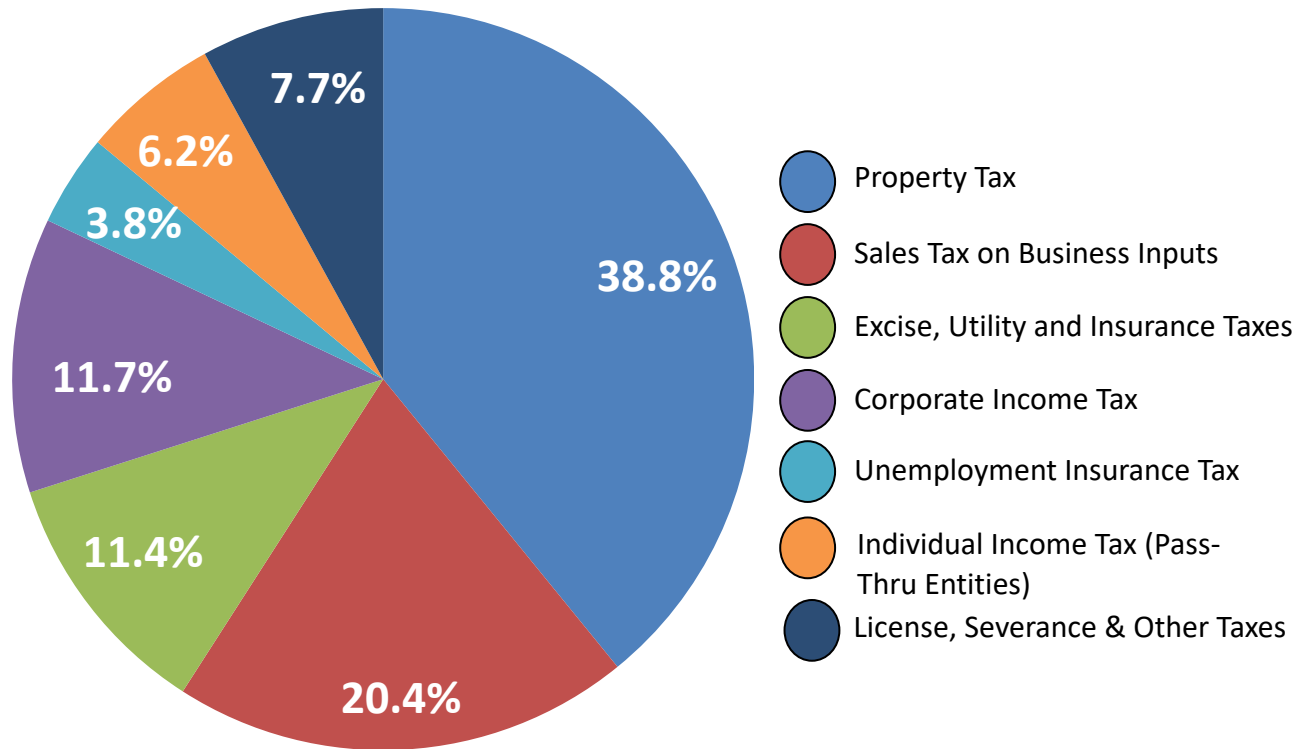


- **The Best and Worst of State Sales Tax Systems**, December 2022
- **State and Local Business Tax Burden Study, Fiscal Year 2021**, December 2022
- **Locally Administered Sales and Accommodations Taxes: Do They Comport with *Wayfair?***, July 2022
- **Resisting the Siren Song of Gross Receipts Taxes: From the Middle Ages to Maryland's Tax on Digital Advertising**, July 2022
- **Down the Rabbit Hole: Sales Taxation of Digital Business Inputs** (*Tax Notes State*, July 18, 2022)
- **A Global Perspective on U.S. State Sales Tax Systems as a Revenue Source: Inefficient, Ineffective, and Obsolete**, November 2021

<https://cost.org/state-tax-resources/cost-studies-articles-and-reports/>

# US FY 2021 State and Local Business Tax Burden Study

U.S. State and Local Business Taxes by Type, FY21



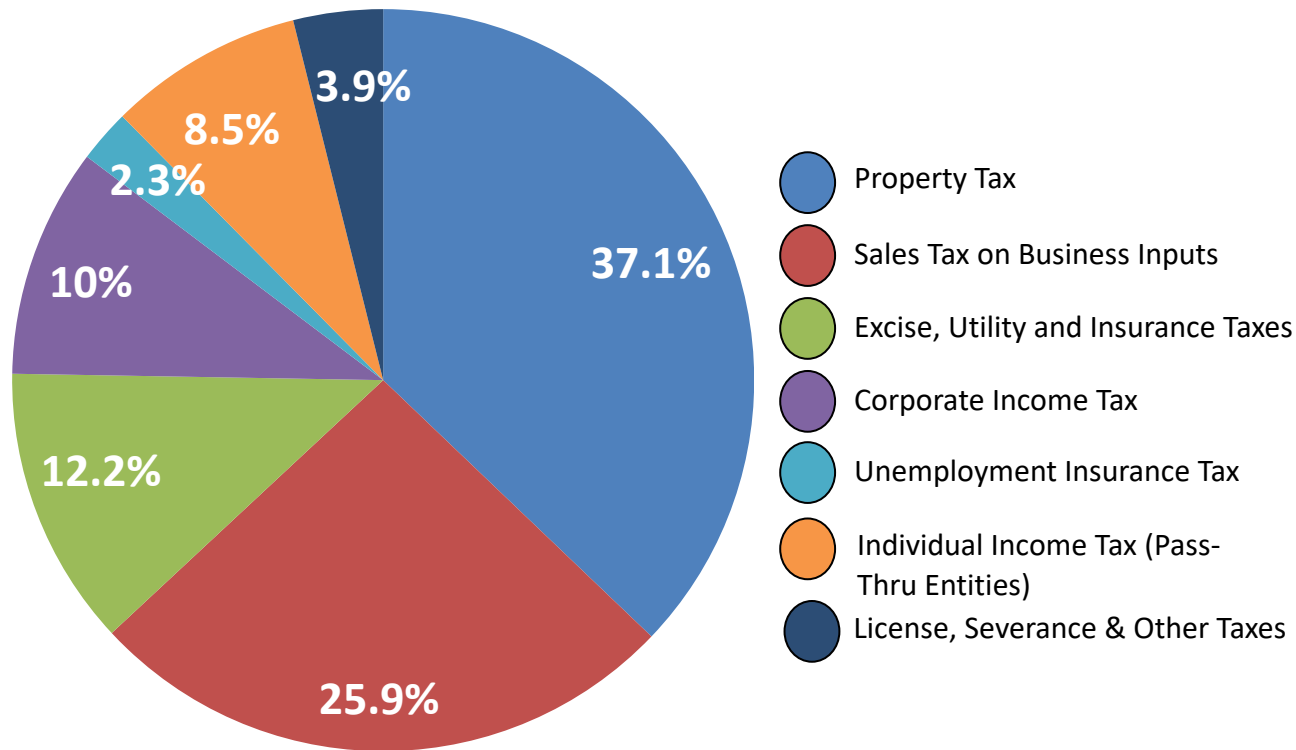
Source: Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2021, study prepared by Ernst & Young LLP for the State Tax Research Institute and the Council On State Taxation (December 2022)

## How Much Do Businesses Pay?

- Businesses paid more than \$951 Billion in U.S. state and local taxes in FY21, an increase of 13.6% from FY20
- State business taxes increased by 17% and local business taxes grew by 10.2%
- Corporate income tax revenue increased by 53.3% in FY21.
- In FY21, business tax revenue accounted for 43.6% of all state and local tax revenue
- Remarkably, the business share of SALT nationally has been within approximately **1% of 44% since FY03**

# UT FY 2021 State and Local Business Tax Burden Study

UT State and Local Business Taxes by Type, FY21



Source: Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2021, study prepared by Ernst & Young LLP for the State Tax Research Institute and the Council On State Taxation (December 2022)

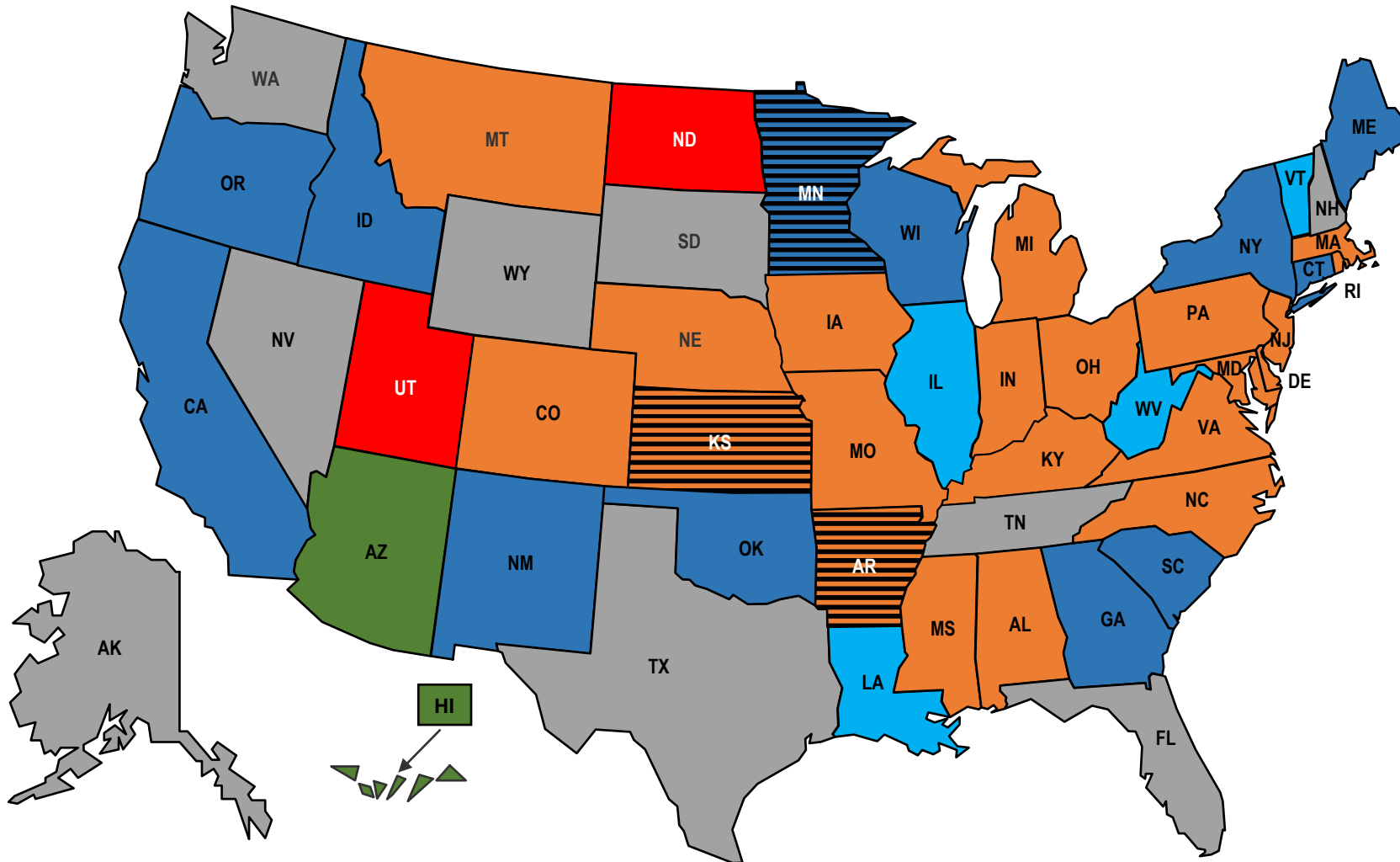
## How Much Do Businesses Pay?

- Businesses paid \$7.4 Billion in UT state and local taxes in FY21, an increase of 21.9% from FY20
  - 4<sup>th</sup> highest change/increase
- State business taxes increased by 28.5% and local business taxes grew by 15.1%
- Corporate income tax revenue increased by 75% in FY21
- In FY21, business tax revenue accounted for 37.9% of all UT state and local tax revenue

# Conformity to TCJA & CARES

	Federal Treatment	Utah's Conformity
<b>Business Interest (IRC § 163(j))</b>	Pre-TCJA – No limit on deduction TCJA (Delayed by the CARES Act until on or after January 1, 2021) – Limited to 30% of ATI CARES Act (until January 1, 2021) – Limited to 50% of ATI	Conforms with no modifications
<b>Foreign Intangible Income (FDII and GILTI) (IRC § 250 &amp; IRC § 951A)</b>	“Global intangible low-taxed income”(GILTI) taxation on foreign income earned by controlled foreign corporations (CFCs) from intangible assets “Foreign derived intangible income” (FDII) deduction related to a special category of earnings that come from the sale of products related to IP	GILTI – Conforms with 50% dividends received deduction qualification FDII – Decouples, FDII deduction is not allowed
<b>Repatriation Transition Tax (IRC § 965)</b>	Tax on post-86 accumulated foreign earning of 15.5% on cash and cash equivalents, and 8% on liquid assets	Conforms with 50% dividends received deduction qualification

# When is a Nonresident Employer Required to Withhold?



Nonresident employee is subject to withholding on the first day of travel into the state

Nonresident employee is subject to withholding after reaching a specific threshold

AZ & HI: 60 days for withholding only

IL: 30 working days (2019)

WV: 30 days (2021)

LA: 25 days (2021)

VT: 30 days (per DOT guidance)

ND, UT: 20 days (MTC Model)

No general state personal income tax

Legislation in 2020, 2021: AR, KS, MN

NOTE: These don't necessarily align with an *employee's* filing requirements.

# Employer Must Withhold if Nonresident Employee



<b>Arizona</b>	Is in the state for more than 60 days in a CY*	<b>New Mexico</b>	Is in the state for more than 16 days in a CY
<b>California</b>	Earns in-state wages above the state's "Low Income Exemption Table"	<b>New York</b>	Is in the state for more than 14 days in a CY and wages earned exceed personal exemptions
<b>Connecticut</b>	Is in the state for more than 15 days in a CY	<b>North Dakota</b>	Is in the state for more than 21 days in a CY and is a resident of a state that provides similar protections (such as reciprocal agreements; certain employees and certain occupations not protected)
<b>Georgia</b>	Is in the state for more than 23 days in a calendar quarter or if \$5,000 or more or 5% or more of total income is attributable to Georgia	<b>Oklahoma</b>	Earns in-state wages of \$300 or more in a calendar quarter
<b>Hawaii</b>	Is in the state for more than 60 days in a CY	<b>Oregon</b>	Earns in-state wages equal to or exceeding the employee's standard deduction
<b>Idaho</b>	Earns in-state wages of \$1,000 or more in a CY	<b>South Carolina</b>	Earns in-state wages of \$800 or more in a CY
<b>Illinois</b>	Is in the state for more than 30 working days in a CY	<b>Utah</b>	Is in the state for more than 21 days in a CY and is a resident of a state that provides similar protections (such as reciprocal agreements; certain employees and certain occupations not protected - (Enacted in 2022 via S.B. 39)
<b>Louisiana</b>	Is in the state for more than 25 days in a CY	<b>Vermont</b>	30 days (per guidance on Department of Taxes website: <a href="https://tax.vermont.gov/business/withholding">https://tax.vermont.gov/business/withholding</a> )
<b>Maine</b>	Is in the state for more than 12 days in a CY	<b>West Virginia</b>	Is in the state for more than 30 days in a CY
<b>Minnesota</b>	Earns in-state wages greater than or equal to the minimum income requirement for filing state income tax return (\$12,525 for 2021)	<b>Wisconsin</b>	Earns in-state wages of \$1,500 or more in a CY

- **CY indicates calendar year**
  - **Disclaimer:** This information should be used for general guidance and not relied upon for compliance.
- Sources: Council On State Taxation (COST), American Payroll Association (APA), Mobile Workforce Coalition



# State Model Legislation for Mobile Workforce Safe Harbor

- **COST State Model Legislation is Available on the COST Website**
- **General Description of State Model Legislation:**
  - Employee earning wages/compensation not subject to tax, and employer not subject to corresponding withholding obligation, unless employee in a non-resident state for more than 30 days and if exceed limit, all earnings subject to tax from first day in the state
  - Similar bills – exclusions for professional athletes, entertainers, speakers and if applicable, film-production employees
  - To encourage other states to adopt – it is suggested the states have a reciprocity provision that would only allow an exemption from tax if the employee’s resident state has a similar law
- **WARNING: Contrast with MTC Model:**
  - 20-day threshold
  - Problematic “key employee” provisions
  - No penalty waiver provisions



**Stephanie Do**  
Senior Tax Counsel  
Council On State Taxation (COST)

[sdo@cost.org](mailto:sdo@cost.org)

