



Sales and Use Tax in

SALES AND USE TAX IN THE CURRENT ECONOMIC CLIMATE

October 21, 2020

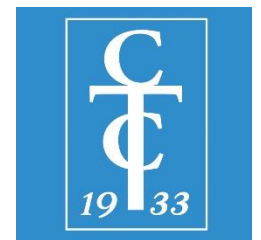
Presenters:

Robert Peters, Duff & Phelps

Keela Ross, Duff & Phelps

Keith Staats, Tax Institute, Illinois Chamber of Commerce

Scott Peterson, Avalara



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INTRODUCTION



Keela Ross (Moderator)

Director for the State Tax Group at Duff & Phelps. Over 15 years of state and local tax compliance and advisory services.



Robert Peters

National Practice Leader for the State Tax Group at Duff & Phelps. Over 35 years of experience in providing state, local and federal tax services to corporate clients.



Keith Staats

An attorney who has been involved in state and local tax for 30 years. Keith is the Executive Director of the Illinois Chamber of Commerce Tax Institute.



Scott Peterson

Vice President of U.S. Tax Policy and Government Relations at Avalara. Named one of the Top 100 Most Influential People in Accounting in 2018 and 2019 by Accounting Today.

DISCLAIMER



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Gain an understanding of how the states have adjusted their budget policies in light of recent developments and revenue shortfalls

Learn how the changing business environment, including working remotely, increasing access to systems and services and operating in a post *Wayfair* world, impacts historical sales tax determinations and obligations

Discover areas to consider when reviewing internal systems, ERP conversions, integration of new business units and sales and use tax processes and procedures

Know what companies can do to adapt in what is certain to be a dynamic landscape over the course of the next year

ABOUT DUFF & PHELPS

Protect, restore and maximize value



Duff & Phelps is the world's premier provider of governance, risk and transparency solutions. We work with clients across diverse sectors in the areas of valuation, corporate finance, disputes and investigations, cyber security, claims administration and regulatory compliance.

~4,000+
TOTAL
PROFESSIONALS
GLOBALLY

MORE THAN
19,000
ENGAGEMENTS
PERFORMED IN 2019

13,500
CLIENTS INCLUDING
NEARLY
47% OF THE
S&P 500

THE
AMERICAS

~2,000
PROFESSIONALS

EUROPE AND
MIDDLE EAST

1,100+
PROFESSIONALS

ASIA
PACIFIC

700+
PROFESSIONALS

ABOUT THE CHICAGO TAX CLUB



The Chicago Tax Club
c/o Irene Brajner
6536 Deer Lane
Palos Heights, IL 60463-2272

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- The Club is dedicated to the professional development of our members, promoting an interchange of ideas and mutual assistance among members and providing the opportunity to participate in accredited continuing professional education programs.
- The Club fosters the highest standards of integrity, competence and professional ethics in tax personnel and the awareness of the significance of taxes as a cost of operations.
- Finally, the Club recognizes that an atmosphere of mutual trust and confidence must prevail among the membership, other tax professionals, employers and government tax administrators.
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State of the States



THE CURRENT SITUATION

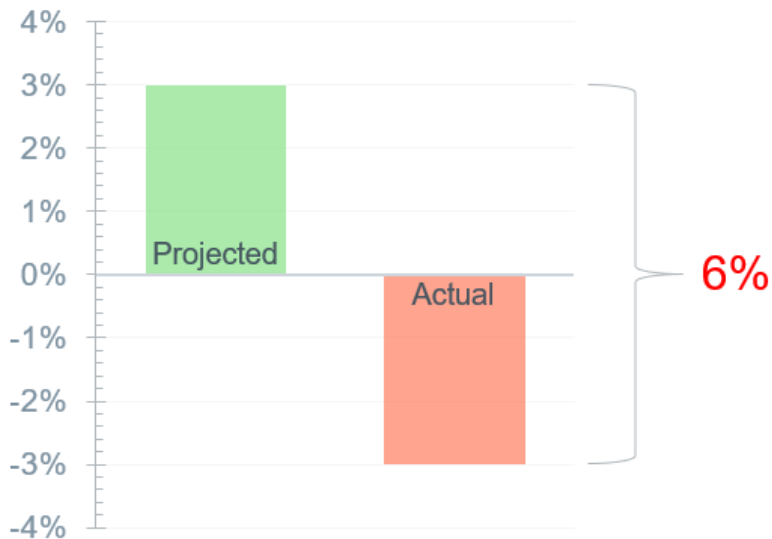


- The pandemic and current wave of violence has affected revenue sources for states in various ways
 - *Increased unemployment*
 - *Reduced consumer spending*
 - *Reduced corporate budgets*
- States are forecasting huge deficits (e.g. CA, NY, IL)
- To be a team player, some states have offered various temporary relief efforts, such as small business loans and waiver of late tax payment penalties to help companies manage reduced cash flow
 - *Some states were slower to align with federal extensions, but have since extended deadlines*
- Audit traffic has increased – lack of travel, more time to focus



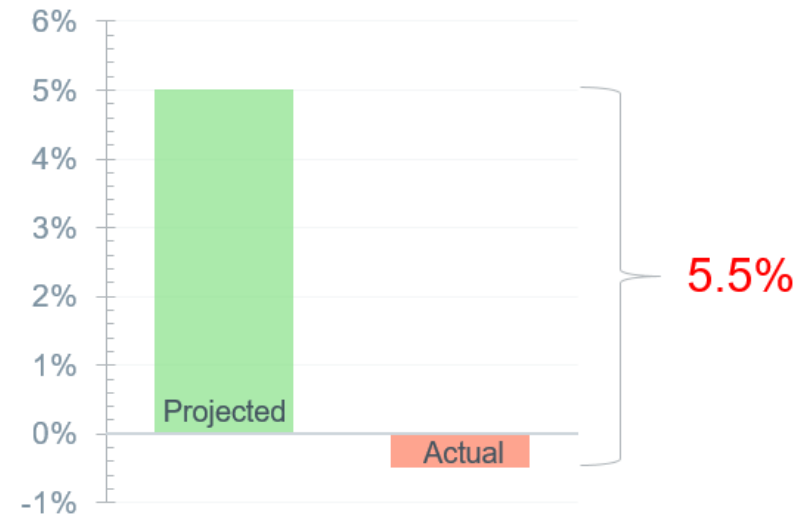
- Despite initial projections, overall State revenues are in a **net loss** position

Overall State Revenue



- Collections declined, resulting in a **5.5%** revenue loss
- The Federation of Tax Administrators estimated a median drop in sales tax collections of *10%* in the fourth quarter of FY 2020

Sales Tax Collections



Note: Analysis is of FY 2020 (7/1/2019-6/30/2020)

Data Source: *State Revenues Decline for First Time Since the Great Recession*, September 8, 2020

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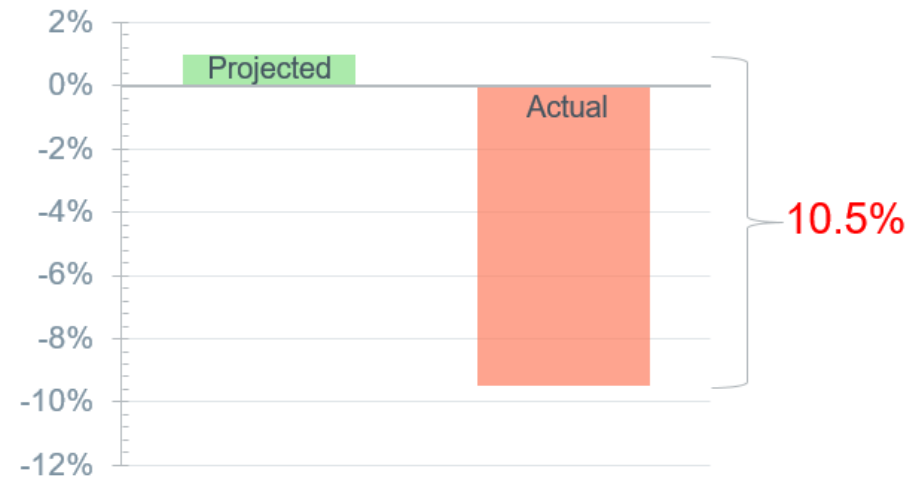
- Personal income tax collections have declined, resulting in a **6.4%** revenue loss

- Corporate income tax collections have declined, resulting in a **10.5%** revenue loss

Personal Income Tax



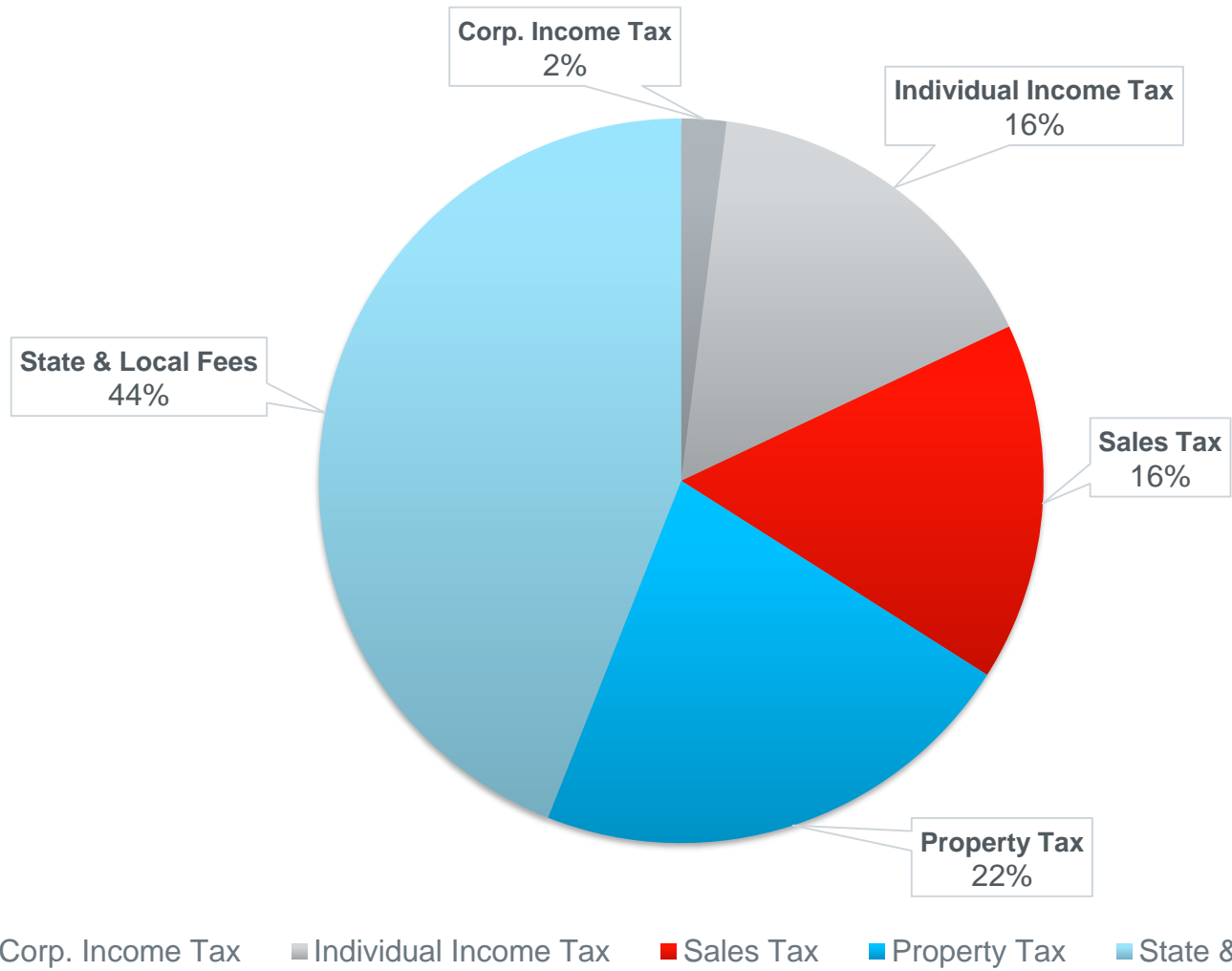
Corporate Income Tax



Note: Analysis is of FY 2020 (7/1/2019-6/30/2020)

Data Source: *State Revenues Decline for First Time Since the Great Recession*, September 8, 2020

COMPONENTS OF STATE AND LOCAL REVENUES



Data Source: *Fiscal Effects of COVID-19*, Auerback, Gale Lutz, Sheiner – presentation to Brookings Papers on Economic Activity, September 24, 2020

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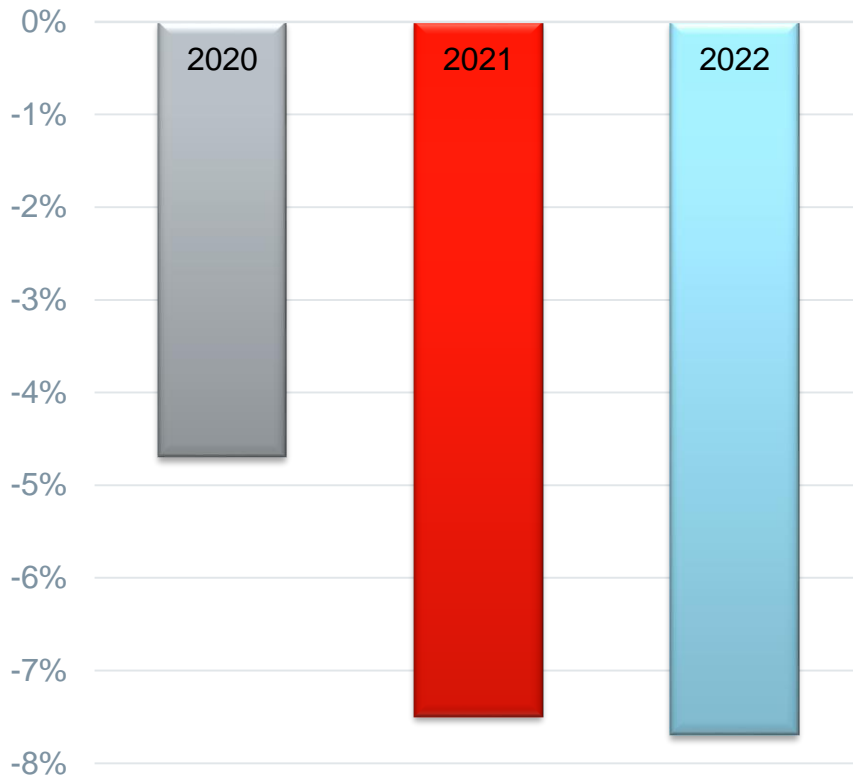
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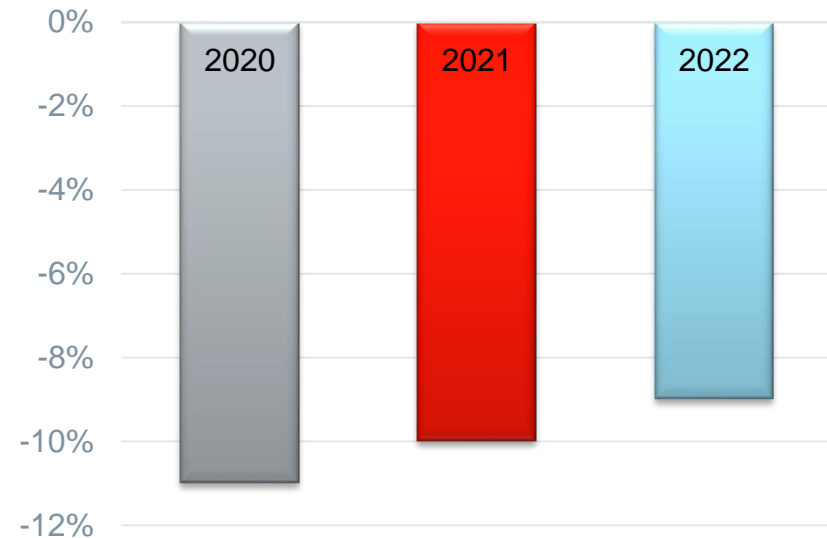
- State and local personal income tax collections are expected to decline in 2020 through 2022

- State and local sales tax collections are also expected to decline over the same period (2020-2022)

State and Local Personal Income Tax



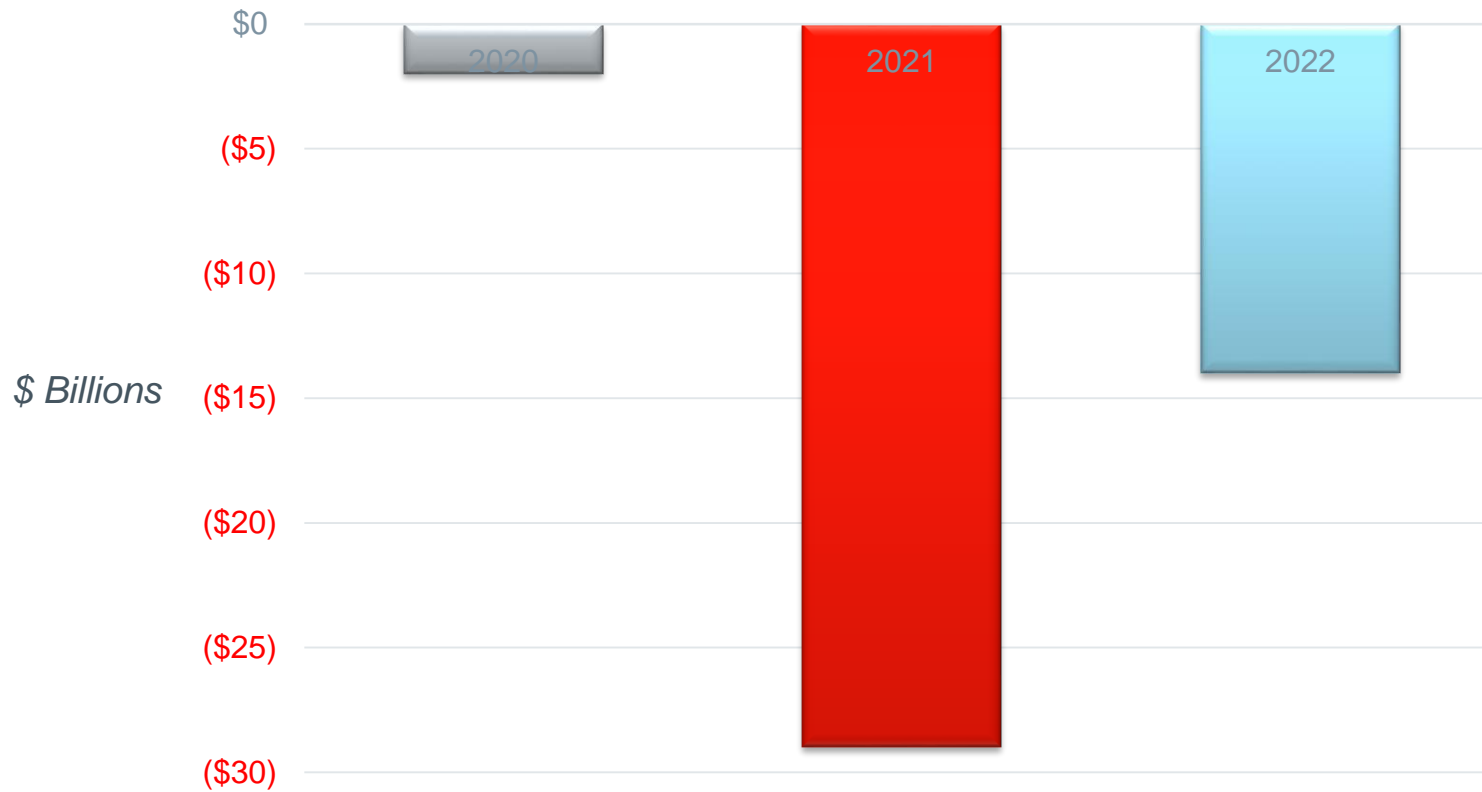
State and Local Tax Collections





- State corporate income tax collections are expected to decline for the period 2020-2022

State Corporate Income Tax Collections

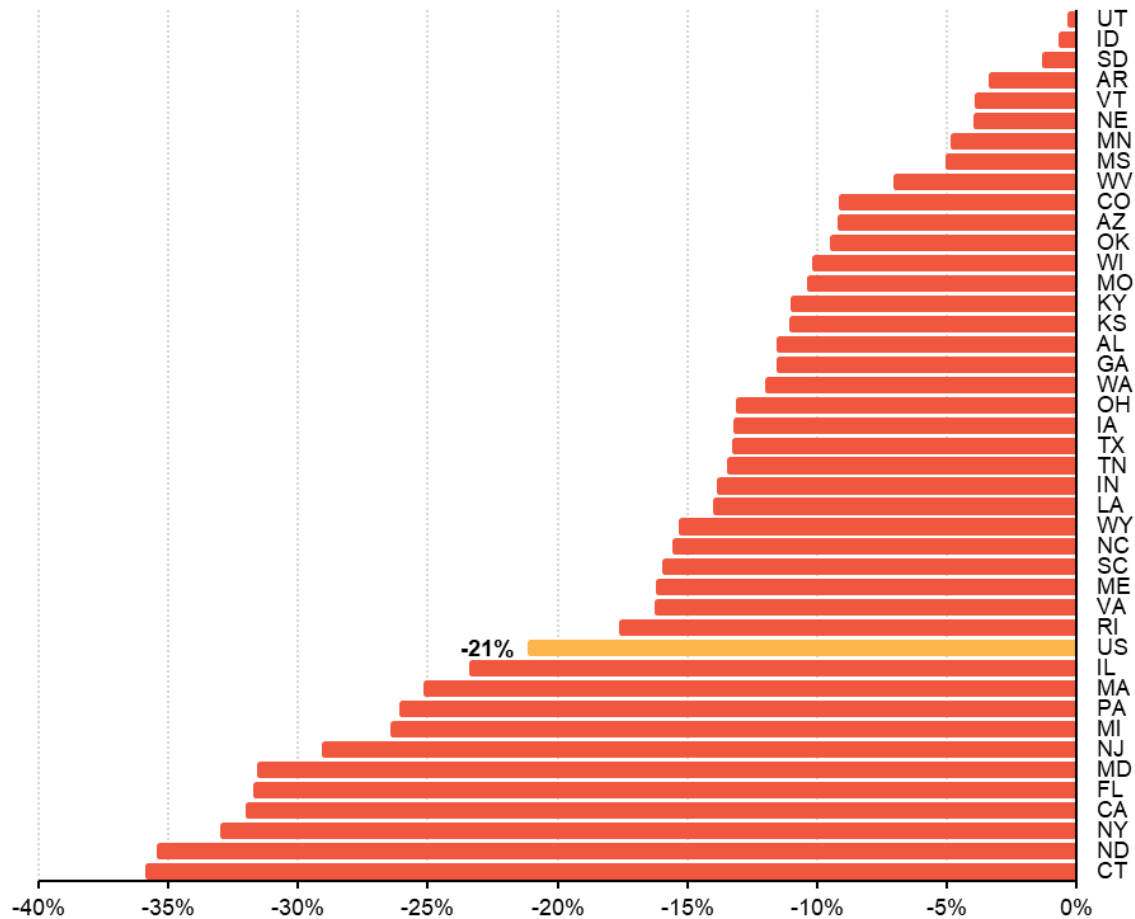


Data Source: *Fiscal Effects of COVID-19*, Auerback, Gale Lutz, Sheiner – presentation to Brookings Papers on Economic Activity, September 24, 2020

DECLINE IN SALES TAX REVENUE BY STATE



Nominal year-over-year percent change, May 2020 vs. May 2019



Data Source: Individual state data collected by Urban Institute
Figure Source: Taxpolicycenter.org



- Bill backlog is an estimated **\$8 billion** as of 10/12/2020
 - *This includes bills with the Comptroller and Comptroller's estimate of **\$1.6 billion** with state agencies*
- Unemployment rate is **10.9%** as of 8/2020
 - *This is nearly 3% greater than the national rate*
- IL Bond Ratings
 - *Baa3 (Moody's)*
 - *BBB (S&P Global Ratings)*
 - *BBB (Fitch)*

THE CONDITION OF THE GLOBAL ECONOMY, COMMERCE AND COVID-19



Covid-19 to add £5.3bn to UK e-commerce in 2020

US retail sales soar 17.7%, biggest monthly increase ever

Online sales reach 10-year high

Chinese shoppers push online retail to new heights

Spanish e-commerce grows 55% due to COVID-19

Australia Post delivers unprecedented \$2.4 billion eCommerce boom during COVID-19

Online shopping has doubled during the pandemic, Statistics Canada says

COVID-19 may redefine online shopping in Africa

Pandemic awakes new customer base for Latin America's e-commerce giants

Brazil ecommerce jumps 57% in first five months of 2020 fueled by COVID-19

Changing Business Environment



LIFE CAN BE COMPLICATED



- Not So Fun Fact:

“There are **over 11,000 standard sales tax jurisdictions in the U.S.**, on top of state and local laws and practices for sales tax administration, audits, enforcement, and notices of rate changes (an average of 577 a year!)” – TaxFoundation.org

ECONOMIC NEXUS REVIEW COMPLETED

Are We Done?

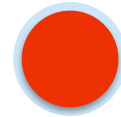


An economic nexus review is an important first step...what is next?



Understand SaaS service offerings and purchases

- ✓ What software or internet related services are being offered?
- ✓ How are these services being billed to customers (bundled or separately stated)?
- ✓ How is tax determinations made; shipped vs. delivered destination?



Is your infrastructure sufficient to support changes?

- ✓ Do ERP and/or POS systems support sales tax calculations?
- ✓ Is information collected from customers complete to properly charge tax (i.e. local tax)?
- ✓ Are billings sufficient to segregate taxable vs non-taxable services (delivery charges, installation, warranty, software license fees, training)?
- ✓ Understand the potential impact of acquisitions and integration of business units

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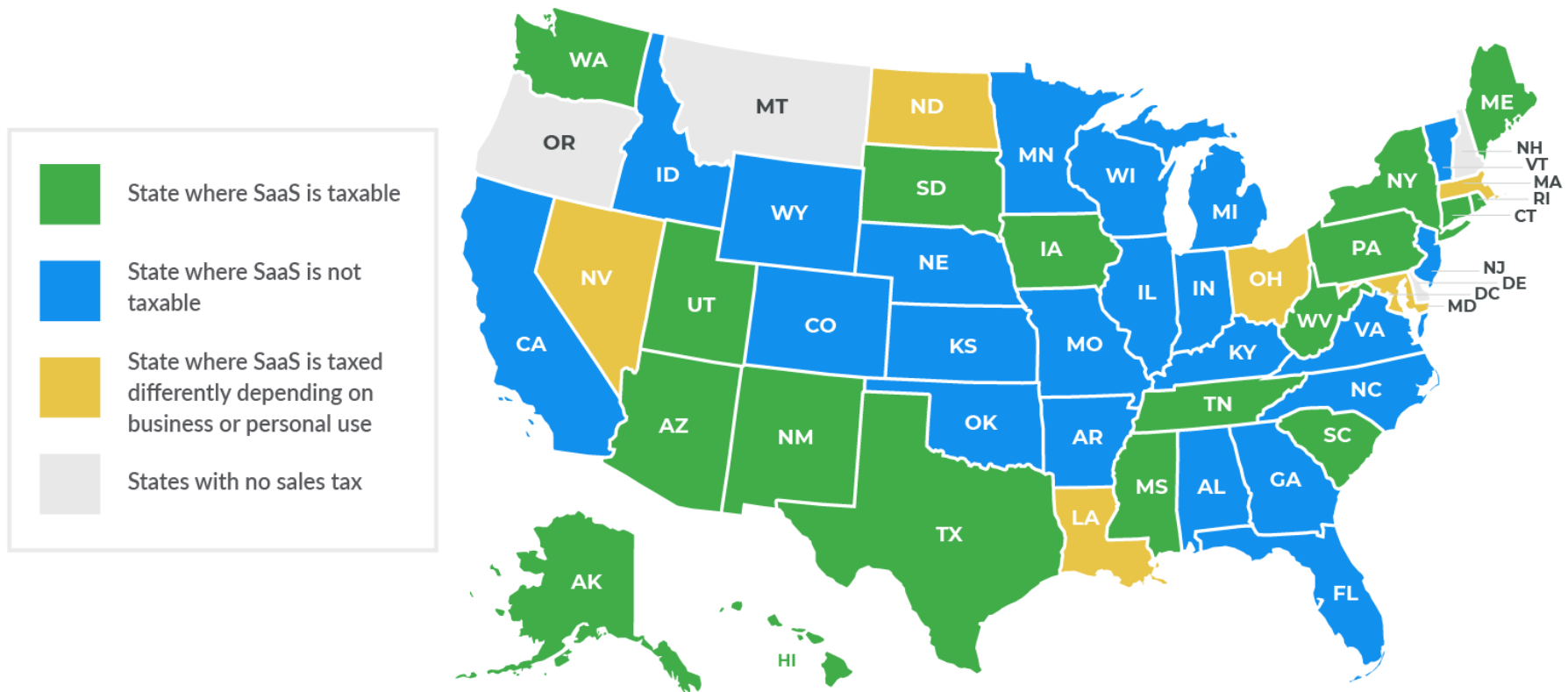


Figure Source: blog.taxjar.com

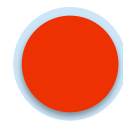


How to mitigate risk based on remote sales or SaaS purchases...



Complete review of sales and purchase activities to identify and quantify potential risk

- ✓ Enter a VDA Amnesty Agreement with States to minimize lookback, interest and penalties
- ✓ Review adequacy of exemption/resales certificate procedures
- ✓ Review historical procurement policies & procedures to identify correct tax determinations
- ✓ Confirm tax determination practices of major customers/suppliers



Execute a compliance and remittance policy

- ✓ Conduct cost/benefit analysis of conducting compliance in house, personnel, tax automation, implementing compliance process, how to monitor tax and rate changes
- ✓ Outsource considerations; include track record of provider, real time access to service provider, timeliness of data and payment transmission, reconciliation of inputs with outputs
- ✓ Establish protocol to track expanding economic or physical nexus triggers

OTHER STATE WAYFAIR CHANGES



California

Switched instate sellers to destination sourcing if their annual sales exceed \$500,000

Colorado

Switched instate sellers to destination sourcing if their annual sales exceed \$100,000

Texas

Requires instate sellers to collect other local use taxes on delivered sales if the sales tax at the location of the sale is less than 2%

Texas

Implemented a statewide composite local use tax rate for remote sellers who want to charge one rate instead of the destination rate

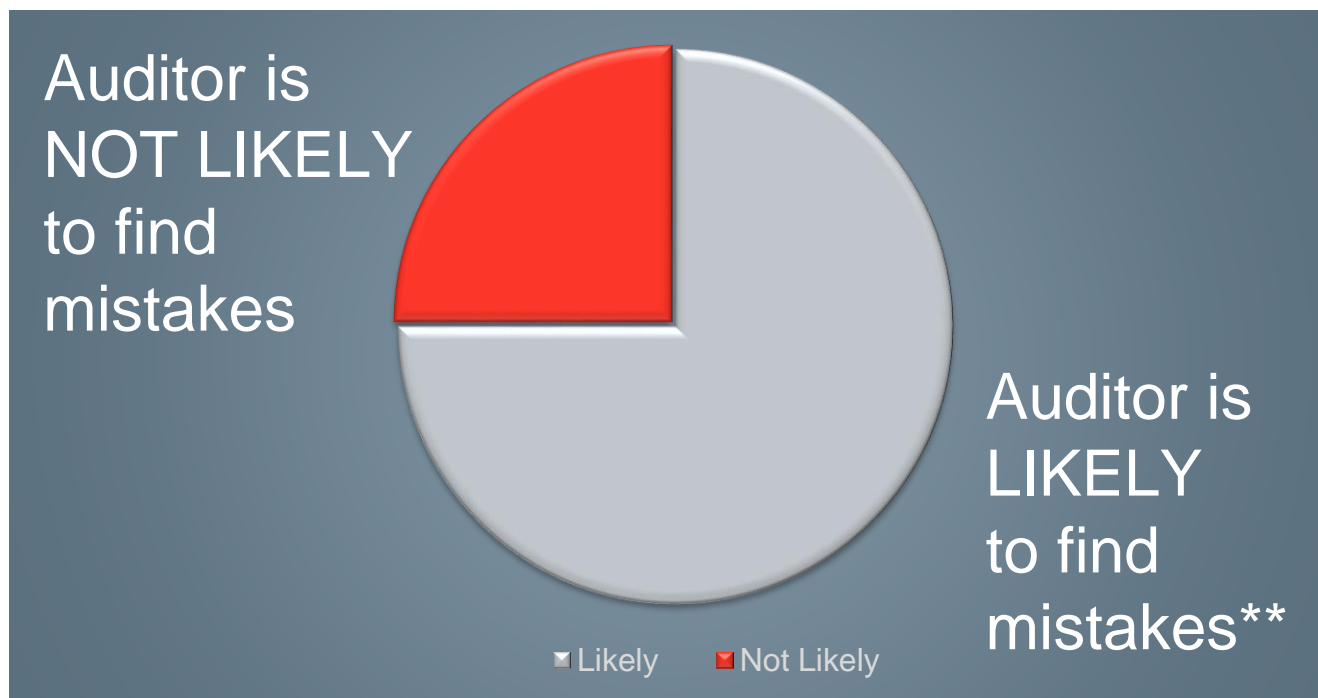
Louisiana

Created a single point of collection and remittance for remote sellers so that remote sellers do not have to submit individual returns in each parish

Alaska

Created a single point of collection and remittance for remote sellers so that remote sellers do not have to submit individual returns in each local government

WHY DO COMPANIES OUTSOURCE TAX COMPLIANCE?



Yearly employee costs of compliance* **\$67,000—\$400,000**

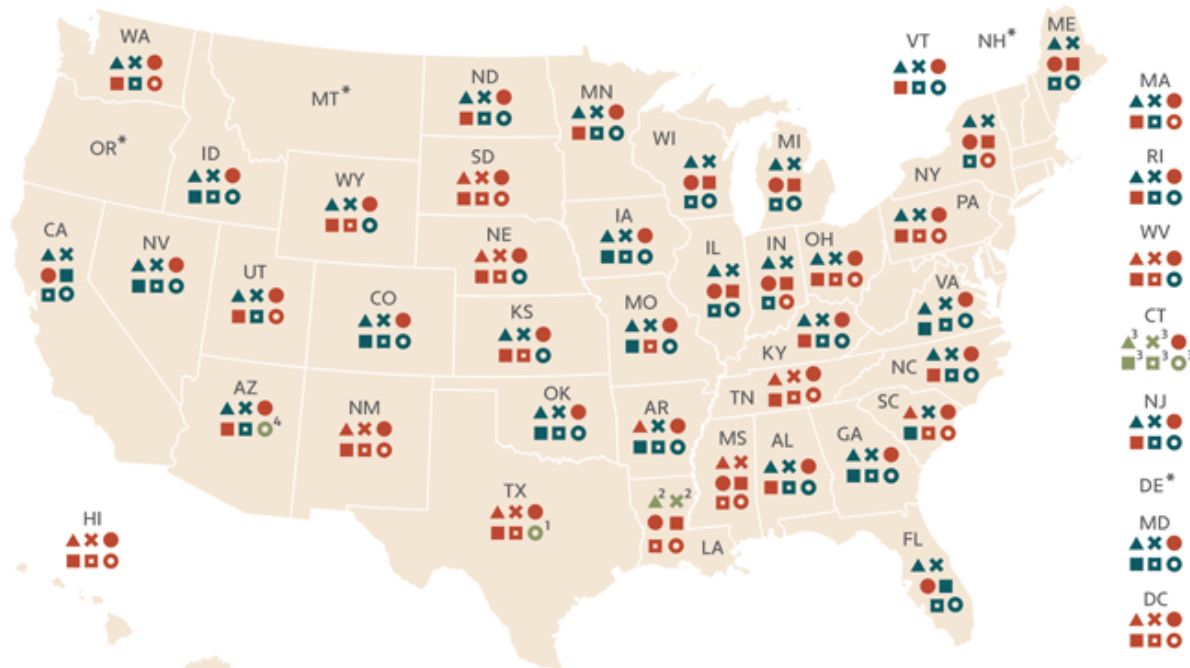
*Aberdeen Research, *The Costs of Compliance*

**Wakefield Research, *Sales and Use Tax Compliance, 2017*

SALES TAX ON SOFTWARE BY STATE



Avalara
Tax compliance done right



Taxable	Exempt	Other (see below)	Software
●	●	●	Canned Software Delivered on Tangible Personal Property
■	■	■	Canned Software Downloaded
▲	▲	▲	Custom Software Delivered on Tangible Personal Property
×	×	×	Custom Software Downloaded
□	□	□	Customization of Canned Software
○	○	○	Software as a Service

Other

- 80% of the charges are taxable
- An alternative rate of 3% is assessed
- An alternative rate of 1% is assessed
- Taxable as Rental

*Alaska, Delaware, Montana, New Hampshire, and Oregon have no state sales tax as of September 2017. Local jurisdiction sales tax may apply.

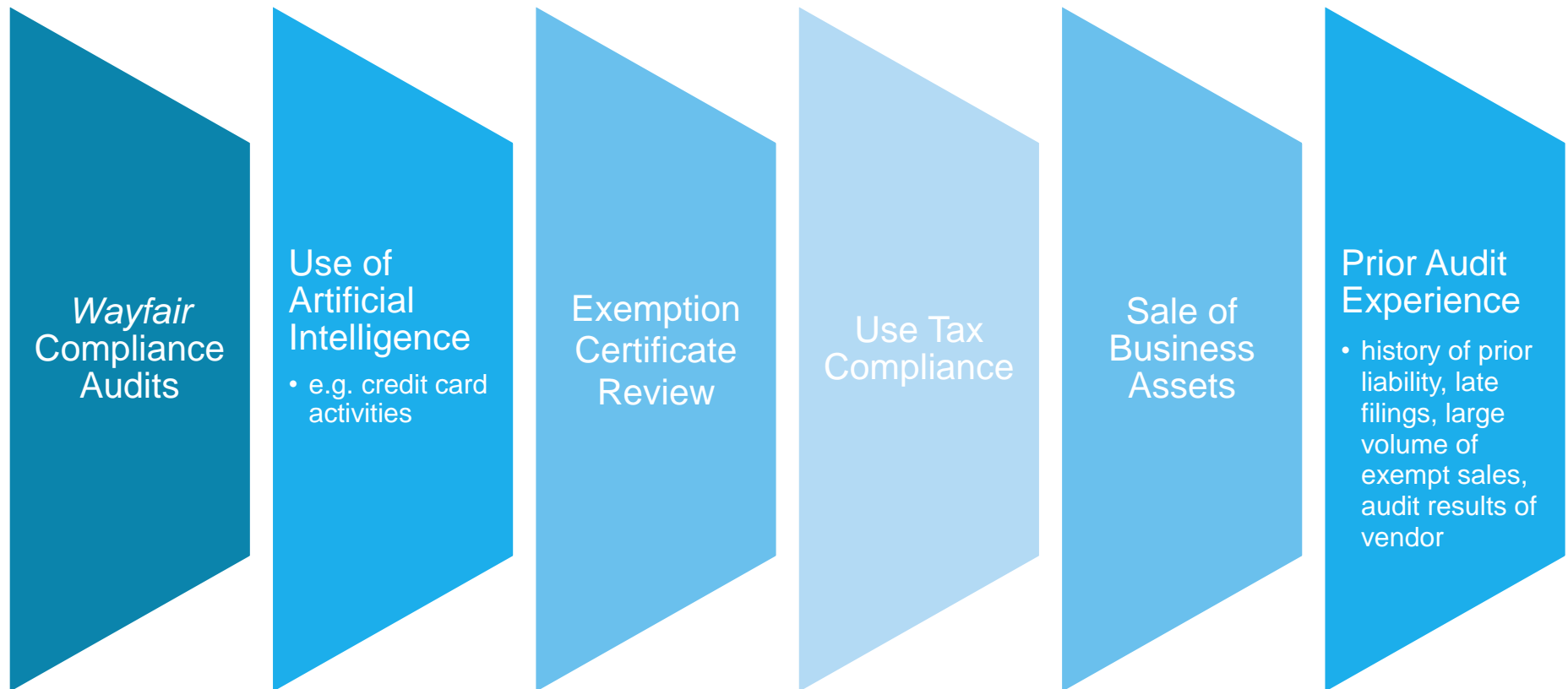
Published by Avalara, September 2017

What Companies Can Do To Adapt





Increased Audit Activity





- **Review sales taxability determination matrix**
- **Review existing invoicing practices**
 - *Bundled goods/services*
 - *Retention practices for securing and retaining exemption/resale certificates*
- **Reconsider sales/use tax implications of capital expenditure/software acquisitions**
- **Consider implications of business acquisition/dispositions, including:**
 - *Allocation of purchase/sales price between tangible/intangible property*
 - *Occasional/bulk sale exemptions*
 - *Stock vs. asset sales*
 - *Negotiation of state/local incentives*
- **Revisit/visit sales tax compliance processes in light of economic downturn**
 - *More compliance/less resources*
 - *Operating in a remote environment (data security, data retention)*
 - *Cost/benefit of in-house, co-sourcing, outsourcing*

WHAT CORPORATIONS CAN DO NOW



“You Never Want a Serious Crisis to Go to Waste” – Rahm Emanuel in response to the 2008 fiscal crisis

- **Recovery of Past Due Taxes**

- Review pre-payments (for states that require advance payments), based on prior sales
- Confirm proper exemptions have been claimed (pollution control, manufacturing, resale)
- Validate rates on high dollar purchases, duplicate payments
- Secure assignment of rights from vendors (directly from states in select jurisdictions)

- **Negotiate Settlements on Pending Audits**

- Resolve long standing differences e.g. IL Fast Track Audit Resolution
<https://www2.illinois.gov/rev/research/publications/bulletins/Documents/2021/FY2021-01.pdf>
- Arrange favorable payment terms

- **Initiate VDA's Where Beneficial**

- Perfect Opportunity to initiate global settlement of potential issues including economic and physical nexus and taxability of select service offerings
- Consider implications in event of audit or potential sale in event of dispositions of divisions or business units

The Crystal Ball



THE POSSIBLE FUTURE OF SALES TAX

Trick or Treat



- Likelihood of Federal Legislation
- Status of Streamline Sales Tax
- Tax Simplification via Market Facilitator Rules
- Continued Expansion of Services Subject to Tax



Duff & Phelps provides demonstrated experience and jurisdictional expertise to address our clients' most challenging sales and use tax issues while providing high-value tax savings ideas, solutions and process improvements.

OUR SERVICES INCLUDE:

- Transactional Analysis/Tax Planning
- Nexus Reviews
- Reverse Audits
- Tax Controversy and Appeals "Audit Defense"
- Compliance Outsourcing
- Operational Review
- Voluntary Disclosure Agreements/Managed Audits
- Sales and Use Tax Process Improvement/Automation

WHY DUFF & PHELPS?

- Sales and Use Tax team has a combined 60 plus years of experience with national and local sales/use tax issues.
- Professionals with diverse sales/use tax background, including the "Big 4," Fortune 500 SALT department, state sales/use tax auditor, private sector SALT consulting and chief state tax administrator.
- Our comprehensive approach utilizes proven controversy, recovery and compliance methodologies.

ROBERT PETERS

Managing Director, Tax Services



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Robert Peters is a managing director in the Chicago office and leads the Sales and Use Tax service line. He has 35+ years of experience providing state, local and federal tax services to corporate clients.

Throughout his career, he has served clients ranging from Fortune 50 to emerging small and mid-cap companies, providing federal and state tax services. His specialization includes leading large project multi-state planning, restructuring, sales tax advisory, unclaimed property and compliance service projects. Bob assists companies in M&A due diligence, audit representation, voluntary disclosures, implementation of best practices and co/outsourcing of sales tax and unclaimed property compliance. He has been on the forefront of helping companies to effectively plan in the growing area of issuing stored value, gift card and consumer rebate programs, including working with states and industry leaders in addressing the unclaimed property, federal tax, and accounting treatment relating to the implementation of such programs. Bob has also been involved in multi-disciplinary reviews that have included members of the Firm's Transaction Advisory Services Practice.

Robert serves retail, health care, consumer markets, manufacturing, public utilities, transportation, telecommunications, media and financial services industries. He is also a frequent speaker on multi-state tax topics for many organizations, including Tax Executives Institute, Treasury Management Association, Financial Executives Institute, National Professional Unclaimed Property Organization, Chicago Tax Club and Council on State Taxation. Additionally, he has been quoted in the Wall Street Journal, Washington Post and authored a series of articles on unclaimed property and state tax topics appearing in Forbes, State Tax Notes, Compliance Weekly, Crain's, Multi-State Taxation and Incentives, Financial Executives Magazine, BNA State Tax Report and Valuation Insights. He also has served as an expert witness in several unclaimed property matters.

Bob's previous experience includes 29 years with KPMG, LLP as National Partner in Charge of State and Local taxes, Midwest area tax risk advisory partner, unclaimed property leader and tax partner in charge of the Stamford office

Robert received his M.B.A. in finance from New York University, his Executive M.B.A from Stanford University and his B.S. in accounting, cum laude, from the University of Denver. He is also a certified public accountant in Illinois and New York. Robert is a prior chairman of the Ct. State Tax Committee; a committee member of the Illinois Tax Federation and he is on the Manufacturing Committee of the Unclaimed Property Professional Organization.

Bob serves as member of the Board of Directors for the National StandUp for Kids program to assist homeless youths and mentors high school students in the Chicago area. He also was an adjunct professor at DePaul University Graduate Business School.

KEELA ROSS

Director, Tax Services



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Keela Ross is a Director in the Addison, Texas office of Duff & Phelps and part of the tax services group with specific oversight and responsibility for managing our Sales and Use Tax practice. She has over 15 years of tax compliance and advisory services experience.

Throughout her career, Keela has supported a series of client service teams in the management of both unclaimed property and other transaction tax audits and voluntary disclosure submissions. She has extensive experience with a number of different accounting and ERP reporting systems to gather, document and organize large volumes of information in support of a client's position. She is intimately familiar with a number of unclaimed property and sales tax software packages and routinely conducts in-house audit and compliance training in the areas of unclaimed property, property tax and sales and use tax. She has a broad range of experience integrating client information and data systems and is a subject matter expert with key responsibility managing Duff & Phelps web portal. This portal is used to streamline the various components of data gathering and reporting responsibilities for our clients. She was among the chief architects of this proprietary data base management system utilizing actual client experiences to design its functionality.

Keela has supported client personnel in the collection, review and analysis of information and currently manages a team of professionals to gather and review information to support tax audits, voluntary disclosures, and compliance matters. She also has directly participated in several negotiations with auditors and state representatives. She serves clients in a number of industries including industrial manufacturing, consumer products, media, retail, information services, and financial services.

Keela began her career in personal property compliance and real estate valuation managing large volumes of data and developing customized client specific solutions and quickly expanded her expertise to include the area of unclaimed property compliance and sales and use tax consulting.

Keela received her M.B.A. from Texas Woman's University and is a licensed Property Tax Consultant in the State of Texas. Keela is a member of the Institute for Professionals in Taxation (IPT), Association for Computers & Taxation (ACT), and the Unclaimed Property Professional Organizations (UPPO).

KEITH STAATS

Executive Director, Tax Institute



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Keith Staats is an attorney who has been involved in state and local tax for 30 years. Keith is the Executive Director of the Illinois Chamber of Commerce Tax Institute. He previously was a director in Grant Thornton's State and Local Tax (SALT) practice in Chicago, where he was involved in tax planning, consulting, and dispute resolution in all areas of state and local taxation. Keith was Counsel at McDermott Will & Emery in Chicago where he specialized in multistate tax planning, consulting and litigation. Keith served as general counsel of the Illinois Department of Revenue and was on the legal staff of the Illinois Department of Revenue for 10 years. Prior to joining the Illinois Department of Revenue, Keith was the Assistant Director of the staff of the Illinois General Assembly's Joint Committee on Administrative Rules.

Professional Affiliations:

Chicago Bar Association State and Local Tax Committee

Illinois State Bar Association State and Local Tax Section council.

Illinois CPA Society State and Local Tax Committee, former Chair

Chicago Tax Club

Educational Background:

J.D. Chicago-Kent College of Law

B.A. Millikin University

SCOTT PETERSON

VP of U.S. Tax Policy and Government Relations



- First Executive Director of the Streamlined Sales Tax Governing Board
- 10 years as the Director of the South Dakota Sales Tax Division
- Named one of the Top 100 Most Influential People in Accounting in 2018 and 2019 by Accounting Today

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