SALES TAX ON SERV ICES

A White Paper Report

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Legal Research Center, Inc.

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- *State-by-State Guide to Employee Leave and Disability*
- *Recovering Online Legal Research Costs*
- *Private Transfer Fees—Potential for Trouble, Problems for the Future?*
- *Government Responses to Climate Change—A Look at State and Local Actions Affecting the Real Estate Industry*
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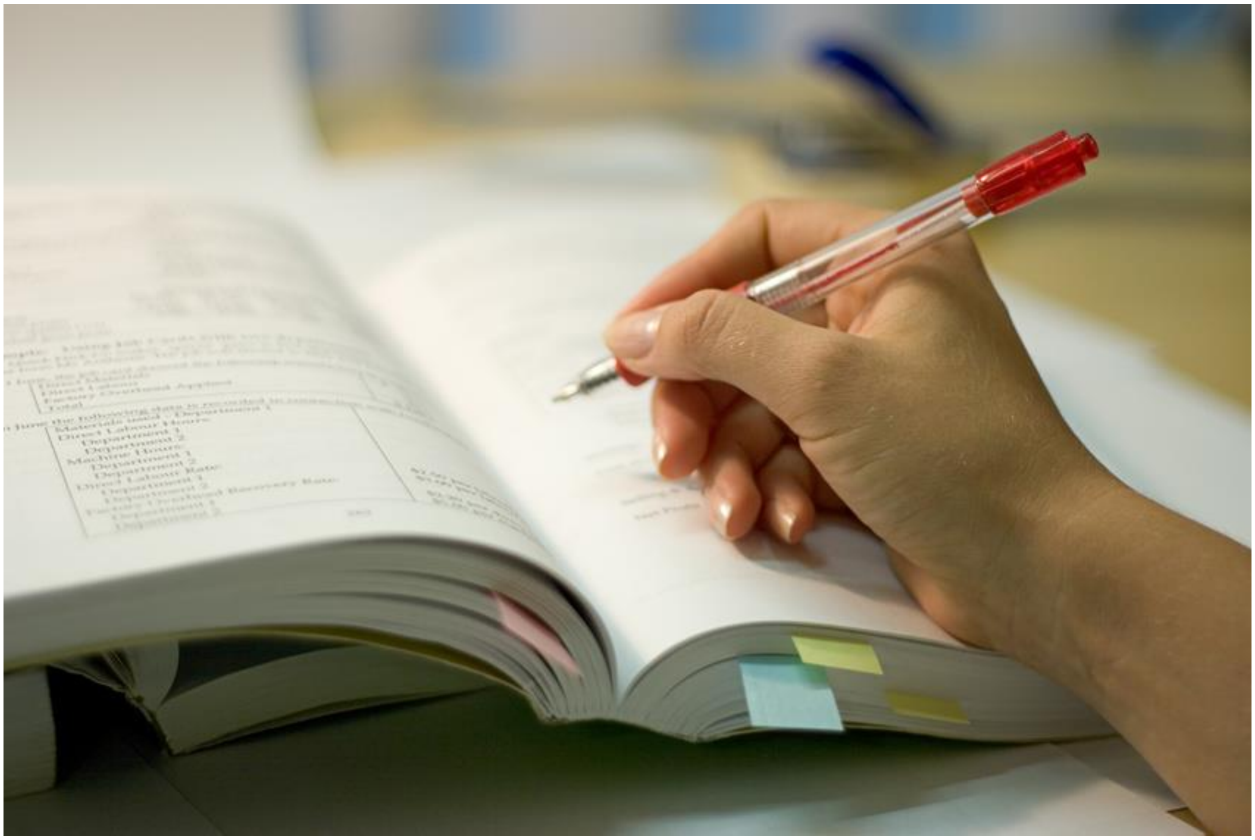

I. SALES TAXES—A GENERAL OVERVIEW

A. The Power to Levy Sales Taxes

The power to levy taxes is one of the shared powers of the federal, state, and local governments.[1] The federal government's power to levy and collect taxes comes from the Taxing and Spending Clause of the United States Constitution.[2] Likewise, the states get their power to tax from their state constitutions. Virtually every state constitution has a general welfare clause, for instance, which is interpreted as granting the state an independent power to regulate for the general welfare, as well as an entire article on taxation.[3] But the power to tax is not limitless; just as state constitutions grant taxing authority, they also place restrictions on the power to tax. Several state constitutions impose limits on the rates of real property and sales taxes, for example.[4] And most state constitutions include a provision requiring that taxes be levied and collected only for "public purposes," a term that is inherently vague and has been subject to various interpretations when challenges are raised to new tax proposals.[5]

Most states and localities levy three principal types of taxes: income taxes, property taxes, and sales taxes. Sales taxes are the most important source of revenue for state governments. Mississippi was the first state to adopt a state sales tax in 1932, and now nearly all states (45, plus the District of Columbia and Puerto Rico) impose a

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[1] *See, e.g.*, *Financing State and Local Government* (American Government Online 2013).

[2] U.S. Const. art. 1, sec. 8, cl. 1 (originally, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence [sic] and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.").

[3] *See, e.g.*, Ga. Const. Art. VII, Taxation and Finance; N.Y. Const. Art. XVI, Taxation; Tex. Const. art. 8, Taxation and Revenue.

[4] *See* M. David Gelfand, Joel A. Mintz, & Peter W. Salsich, Jr., *State and Local Taxation and Finance* (3d ed. 2007), at 9.

[5] *Id.* at 9-10.

general sales tax that applies to most goods. Five states currently impose no statewide sales tax at all: Alaska, Delaware (although it has a broadly based gross receipts tax), Montana, New Hampshire, and Oregon (although corporations must pay a tax tied to their sales). Alaska and Montana do, however, allow localities to charge local sales taxes.[6]

Some states have adopted specific sales tax exclusions for necessities, like groceries and prescription drugs. In fact, nearly every state exempts prescription medicine, and 31 states and the District of Columbia exempt groceries (although some states, including Colorado and North Carolina, permit local governments to tax groceries). Many states in which food is not exempt tax it at a reduced rate.[7] Clothing is exempt in some states as well.[8]

Some cities (38) also collect sales tax.[9] A majority of states allow a local (city, county, or special district) sales tax option in addition to the state sales tax; Alaska authorizes *only* local options. States with higher rates, like Mississippi and Rhode

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[6] Scot Drenkard, Liz Emanuel & Jordan Yahiro, *State and Local Sales Tax Rates Midyear 2014* (Tax Found. Sept. 16, 2014). The Tax Foundation is a non-partisan research think tank, based in Washington, D.C. *See also* *State Sales and Use Taxes 2013* (Nat'l Conf. of State Legis. 2013). Use taxes capture revenues on purchases that are not subject to the state sales tax, namely, purchases from out-of-state vendors who are not responsible for collecting tax on interstate transactions. Most states impose a use tax on the storage, use, or consumption of tangible personal property within the state upon which sales tax has not been paid. The state collects use taxes from out-of-state vendors that are registered with the state or from purchasers in the state.

For more specific information on each state, see LRC's 2015 research results in the *Sales Tax on Services* Annual Report, including links to primary source materials, which are available to NAR members via the website www.legalebook.com.

[7] *State Sales and Use Taxes 2013*, *supra*; *see also* Brad Broberg & Vicki C. Krueger, *State and Local Taxation—A White Paper Report* (NAR Oct. 2013) (also available to NAR members as an ebook at www.legalebook.com.

[8] *See* Richard Borean & Liz Malm, *Map: State Sales Taxes and Clothing Exemptions* (Tax Found. Nov. 19, 2013).

[9] Drenkard, Emanuel & Yahiro, *supra*, *State and Local Sales Tax Rates Midyear 2014*.

Island, typically do not permit local sales taxes, whereas some states with low rates, like Colorado, allow extensive use of local options. Accordingly, comparing state rates alone may not accurately represent the relative sales taxes paid by residents of each state.[10] Notable examples of local sales tax variations include cigarette taxes (compare, for example, Chicago, Illinois (68 cents per pack); Cook County, Illinois ($3.00 per pack); New York City ($1.50); and Anchorage, Alaska ($2.206);[11] and tourism or hospitality taxes (which tax hotel, restaurant, alcohol, and entertainment purchases).[12] Some cities create special taxes (and taxing districts) to pay for tourism promotion, downtown development, convention centers, or stadiums. In 2012, Indianapolis imposed a stiff 17% hotel tax, with 10% going to fund the Indiana Stadium and Convention Building Authority, which built a new stadium for the NFL's Indianapolis Colts.[13] Minnesota politicians agreed during that same year to use a special 3% downtown Minneapolis restaurant and hotel tax, originally imposed to support the local convention center, to help pay for a new stadium for the Minnesota Vikings.[14] The 3% is on top of local and state sales taxes and a transit levy, making the tax on Minneapolis restaurant meals the highest in the nation at 10.775%, according to a 2012 Tax Foundation study of restaurant taxes in the 50 largest U.S. cities.[15]

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[10] *State Sales and Use Taxes 2013*, *supra*. Sales tax rates are discussed in more detail in Part I.C below.

[11] Campaign for Tobacco Free Kids, *Map of Cigarette Tax Rates* (Aug. 1, 2013) (2013 rates),

[12] *See* Janet Novack, *Travelers Alert: The 10 U.S. Cities that Tax Tourists the Most* (Forbes Oct. 10, 2012).

[13] Lucas Oil Stadium, http://en.wikipedia.org/wiki/Lucas_Oil_Stadium.

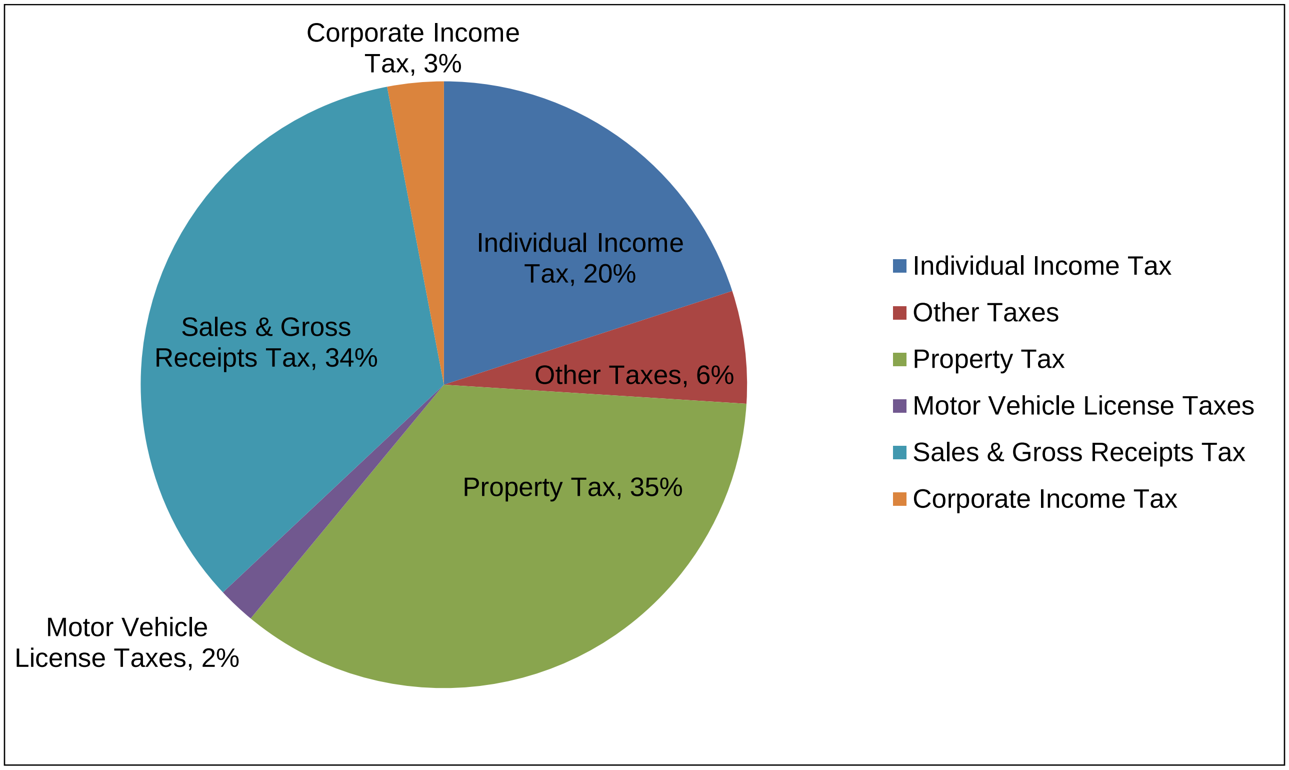
[14] Minneapolis City Council Approves Tax Shift for Vikings Stadium (MPRNews.org May 24, 2012) http://www.mprnews.org/story/2012/05/24/minneapolis-city-council-tax-shift-vikings-stadium.

[15] *Id.* (citing Joseph Henchman, Alex Raut, & Kevin Duncan, *Meal Taxes in U.S. Cities* (Tax Found. Mar. 1, 2012)).

B. Sales Taxes as a Revenue Source

Although property taxes make up the largest piece of the state and local government revenue pie, bringing in 35% of the total, sales and gross receipts taxes[16] come in a close second at 34%.[17]

Figure 1. Sources of State and Local Tax Revenue[18]



[16] Gross receipts taxes are simply structured, taxing all business sales with few or no deductions. Because they tax *transactions*, they are often compared to retail sales taxes; however, while sales taxes generally apply only to final sales to consumers, gross receipts taxes apply to all transactions, including intermediate business-to-business purchases of supplies, raw materials, and equipment. As a result, gross receipts taxes create an extra layer of taxation at each stage of production that sales and other taxes generally do not—a phenomenon economists call "tax pyramiding." *See* Tax Foundation, *Gross Receipt Taxes*.

[17] *See* Liz Malm & Ellen Kant, *The Sources of State and Local Tax Revenues* (Tax Found. Jan. 28, 2013) (based on 2010 data, the most recent available through the Tax Foundation). Individual income taxes comprise a 20% slice, whereas corporate income taxes bring in the smallest amount of any major tax, providing only about 3% of the funds taken in by state and local tax collectors. *Id.*

[18] Source: U.S. Census Bureau, Tax Foundation calculations (based on 2010 data).

These are national averages, and there are significant local variations. The percentage for each state is shown in the table below.

Table 1. Percent of State Tax Revenue from Sales Taxes

State	Percent of Tax Revenue from Sales Taxes[19]
Alabama	25.2%
Alaska	N/A
Arizona	41.1%
Arkansas	35.4%
California	26.6%
Colorado	23.0%
Connecticut	24.2%
Delaware	N/A
District of Columbia	22%[20]
Florida	59.4%
Georgia	31.8%
Hawaii	51.4%
Idaho	36.4%
Illinois	25.2%
Indiana	42.1%
Iowa	30.8%
Kansas	36.4%
Kentucky	28.4%
Louisiana	31.7%
Maine	27.5%
Maryland	24.4%

[19] Source: Nat'l Conf. of State Legis. calculations based on data from the U.S. Census Bureau (2011).

[20] The data for the District of Columbia is from fiscal year 2010 (rather than 2011), as provided in the Tax Foundation's *Weekly Map: Sources of State and Local Tax Revenue: Sales, Excise, and Gross Receipts Tax* (Tax Found. Feb. 4, 2013), reproduced in Figure 2 below.

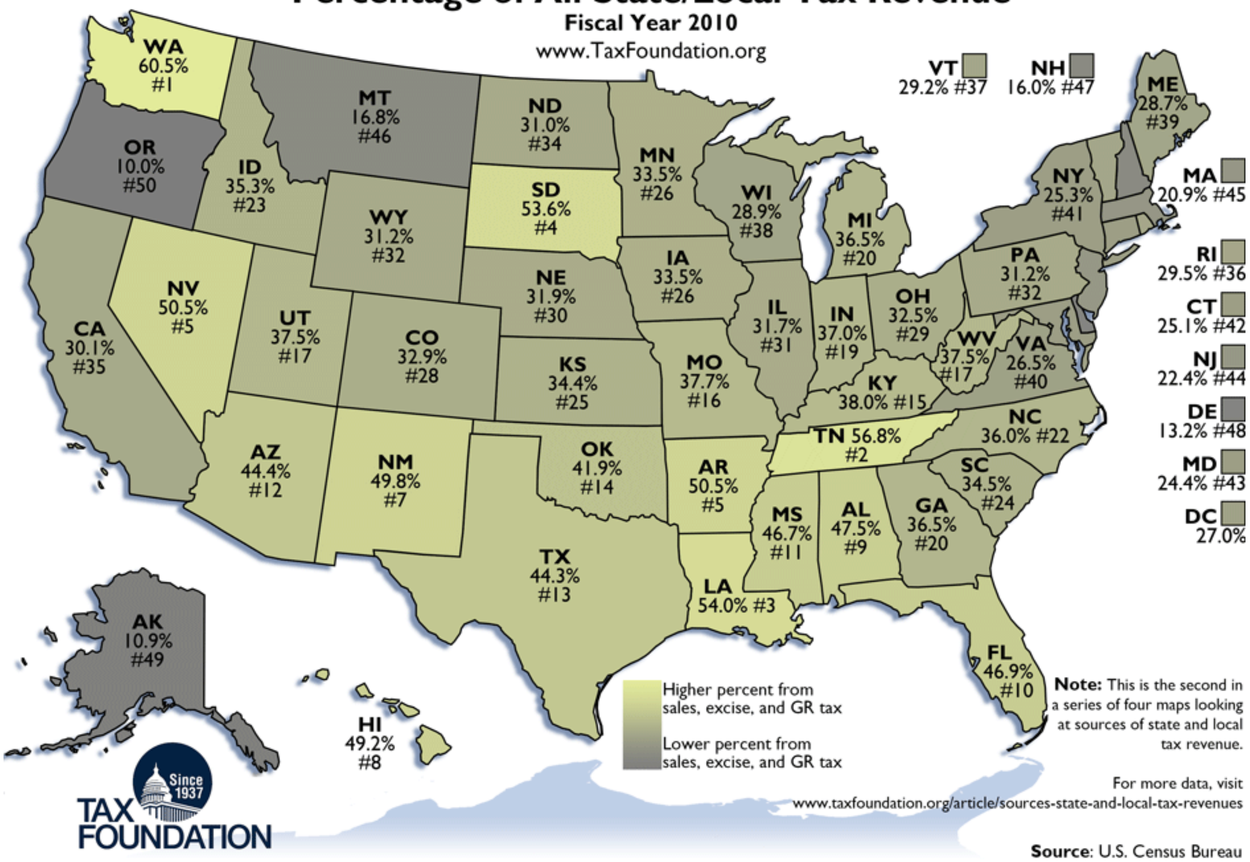
State	Percent of Tax Revenue from Sales Taxes[19]
Massachusetts	22.3%
Michigan	40.3%
Minnesota	24.6%
Mississippi	43.7%
Missouri	29.4%
Montana	N/A
Nebraska	33.4%
Nevada	46.3%
New Hampshire	N/A
New Jersey	30.0%
New Mexico	37.8%
New York	17.0%
North Carolina	27.6%
North Dakota	20.3%
Ohio	30.9%
Oklahoma	28.0%
Oregon	N/A
Pennsylvania	27.7%
Rhode Island	30.1%
South Carolina	36.3%
South Dakota	58.6%
Tennessee	57.0%
Texas	50.5%
Utah	33.7%
Vermont	12.1%
Virginia	19.9%
Washington	60.8%
West Virginia	23.5%

State	Percent of Tax Revenue from Sales Taxes[19]
Wisconsin	26.8%
Wyoming	35.1%
Puerto Rico	6.8%

This information (based on 2010, rather than 2011, data) is also illustrated in the map in Figure 2 below.

Figure 2.[21]

Sales, Excise, and Gross Receipts Tax Revenue as a Percentage of All State/Local Tax Revenue



[21] Nick Kasprak, *Weekly Map: Sources of State and Local Tax Revenue: Sales, Excise, and Gross Receipts Tax* (Tax Found. Feb. 4, 2013).

As shown in the both the table and the map, the state getting the highest portion of its tax revenues from sales and gross receipts taxes is Washington, with over 60% derived from this source.[22] Washington is a bit of an anomalous state, tax-wise, in that it assesses both a sales tax on retail sales, including some services that involve improvements to real property, and a business and occupation (B&O) tax on the gross income of most businesses. In Washington, every person engaged in the business of providing real estate brokerage services is subject to a B&O tax of 1.5% of the business's gross income. A B&O tax of 0.471% applies to taxable retail sales of abstract, title, insurance, and escrow services; title insurance agents are also subject to a 0.484% gross proceeds tax under the B&O tax law. In addition, a state sales tax of 6.5% applies to sales of abstract, title insurance, and escrow services.[23]

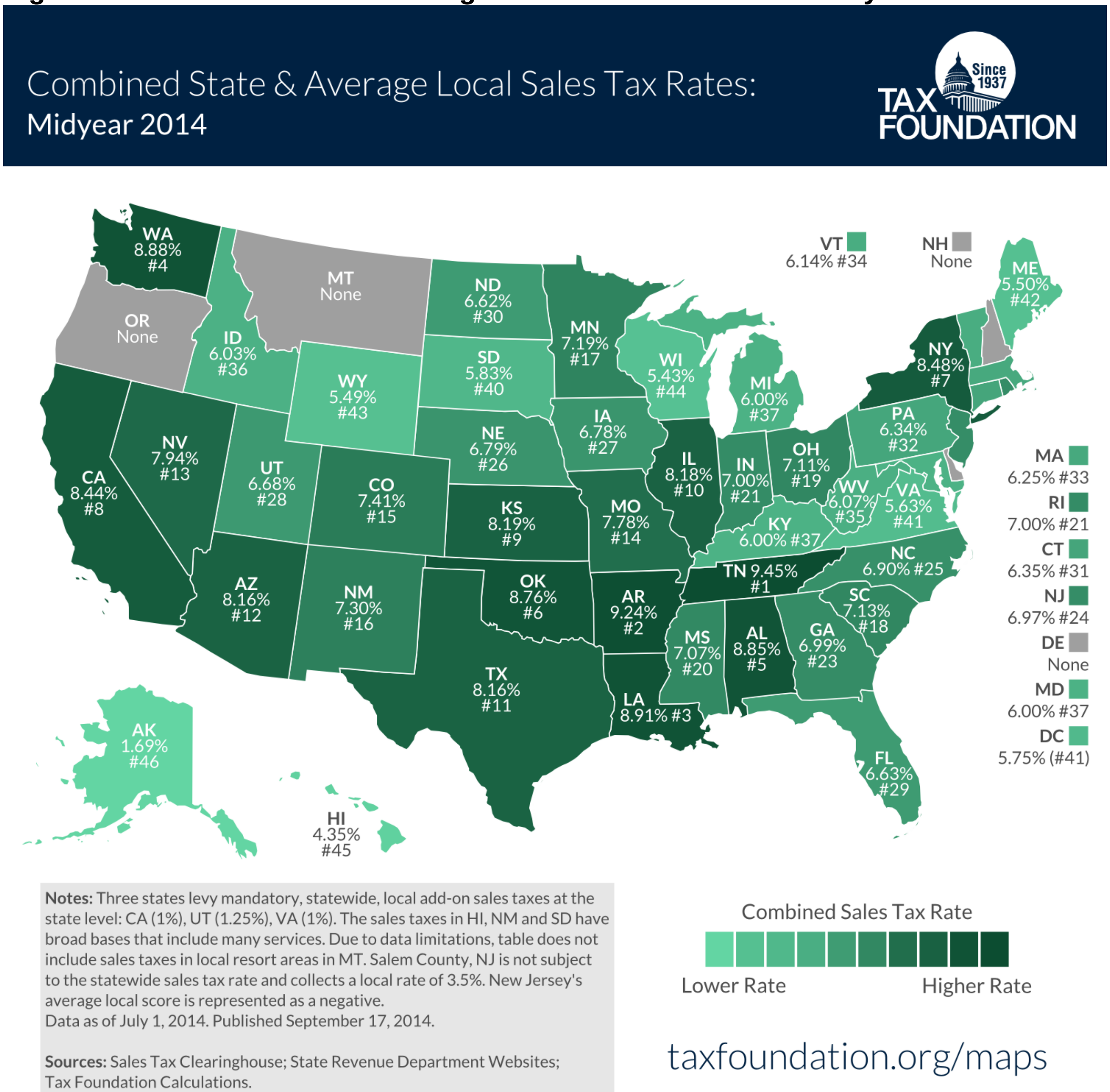
C. Sales Tax Rates

Just as the relative contributions to state revenues varies across state lines, so do the sales tax rates. The five states with the highest average combined state and local rates are Tennessee (9.45% percent), Arkansas (9.24%), Louisiana (8.91%), Washington (8.88%), and Alabama (8.85%). The five states with the lowest average combined rates are Alaska (1.69%), Hawaii (4.35%), Wisconsin (5.43%), Wyoming (5.49%), and Maine (5.50%). These data are illustrated in the map below.

[22] Malm & Kant, *supra, The Sources of State and Local Tax Revenues*.

[23] For more information on Washington state's fairly complicated tax scheme, see Wash. Rev. Code §§ 82.04.050, .051, .070, .080, .220, .250, .255, .260, .263, .280, .290, .29002, .320, .4281, .44525; .08.010, .020 (2012); Wash. Admin. Code 458-20-138, -146, -151, -163, -207, -224 (2013). These provisions are summarized by LRC in the State Issues Tracker Library, available via ebook to NAR members (see the Annual Report on *Sales Tax on Services* for Washington state). The taxes paid by Washington state real estate brokerages are set out in detail in LRC's *Washington State Excise Tax Review & Report* (Jan. 9, 2015), which is reproduced in Appendix 2

Figure 3. Combined State & Average Local Sales Tax Rates: Midyear 2014[24]



Local rates aside, California has the highest state-level sales tax rate at 7.5%. Five states tie for second-highest at 7%: Indiana, Mississippi, New Jersey, Rhode Island, and Tennessee. The lowest non-zero state-level sales tax is imposed in

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[24] Drenkard, Emanuel & Yahiro, *supra*, [State and Local Sales Tax Rates Midyear 2014](#).

Colorado, with a rate of 2.9%, and seven states follow with 4%: Alabama, Georgia, Hawaii, Louisiana, New York, South Dakota, and Wyoming.[25]

D. Sales Tax Bases

Looking at tax rates alone does not present a complete picture of the sales tax burden in a particular locale, because it does not account for differences in tax bases—that is, differences in what is taxable and non-taxable. State laws can vary greatly in this regard. Most states tax only sales of goods, but others tax services as well. Some commentators argue—and many legislators apparently believe—that a growing share of the consumer dollar is spent on services, which may escape taxation.[26] The shrinking relative share of the consumer dollar spent on goods has, this argument goes, forced states to look at other ways of raising state tax revenues. Of course, not all evidence supports this position, however, as discussed in detail in Part II immediately below. In fact, the two states that tried to expand their sales tax to services in the late 1970s and early 1980s—Florida and Massachusetts—met with such political resistance that the laws were repealed soon after enactment.[27] No states have since attempted a similarly comprehensive expansion of their sales tax base, but many states have gradually broadened their tax base and extended the sales tax to include a variety of consumer services.[28]

[25] *Id.*

[26] *State Sales and Use Taxes 2013* (Nat'l Conf. of State Legis. 2013).

[27] *Id.*

[28] *Id.* See LRC's *Sales Tax on Services* Annual Report for 2015 for up-to-date information on each state, and the discussion in Parts II and III below.

II. EXTENDING SALES TAXES TO SERVICES

A. Taxing Services—An Overview

Although sales taxes may most often be thought of in connection with sales of goods, as of January 2015, 81% of state-level jurisdictions[29] imposed a sales tax on at least some services, such as telecommunications, entertainment admissions, or utilities.[30] Most of these taxes do not, however, apply to construction services, real estate commissions, or other services related to the real estate industry. Eight jurisdictions[31] have a business or occupation tax that, although technically not a sales tax, effectively taxes the sale of services in the jurisdiction. And as noted above, Washington's fairly complicated tax scheme includes both a sales tax on goods and some services, and a business and occupation tax on many services.[32]

Professional services are generally taxed in only seven state-level jurisdictions,[33] according to LRC's research. Most states with a sales tax exempt the bulk of professional services, but professionals are often required to pay a sales tax on items purchased to conduct their businesses. The majority of states with a broad-reaching business and organization tax apply the tax to most professions, although South Dakota exempts medical professionals. The definition of "professional services" in these states includes lawyers, accountants, architects, engineers, landscape architects, real estate

[29] AL, AZ, AK, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VI, WA, WV, WI, WY.

[30] The research is performed annually by Legal Research Center (LRC) and was most recently updated in January 2015. The 2015 LRC research results, including links to the primary source materials, are available to NAR members via the website www.legalebook.com.

[31] DE, GU, HI, NM, OR, SD, VI, WA.

[32] For more about Washington's tax scheme, see Part I.C above and Appendix 2.

[33] DE, GU, HI, NM, SD, VI, WA. These are the same states that tax real estate commissions, as illustrated by the map in Figure 3 below.

appraisers, and real estate brokers, all of whom may be involved in real estate-related transactions.[34]

The application of sales and business and occupation taxes to contracting and construction trades varies significantly, and how the taxes are applied can turn on minor distinctions. For example, only prime contractors' services are taxed in Arizona. In Connecticut, a contractor's services are taxable only if they are rendered in conjunction with existing commercial, industrial, or income-producing property; they are exempt if rendered in connection with new construction or residential property. In West Virginia a contractor's services are exempt if the activity results in a capital improvement. Overall, 14 state-level jurisdictions[35] tax contracting or construction services under certain delineated circumstances.

B. Sales Tax on Commissions and Real-Estate-Related Services

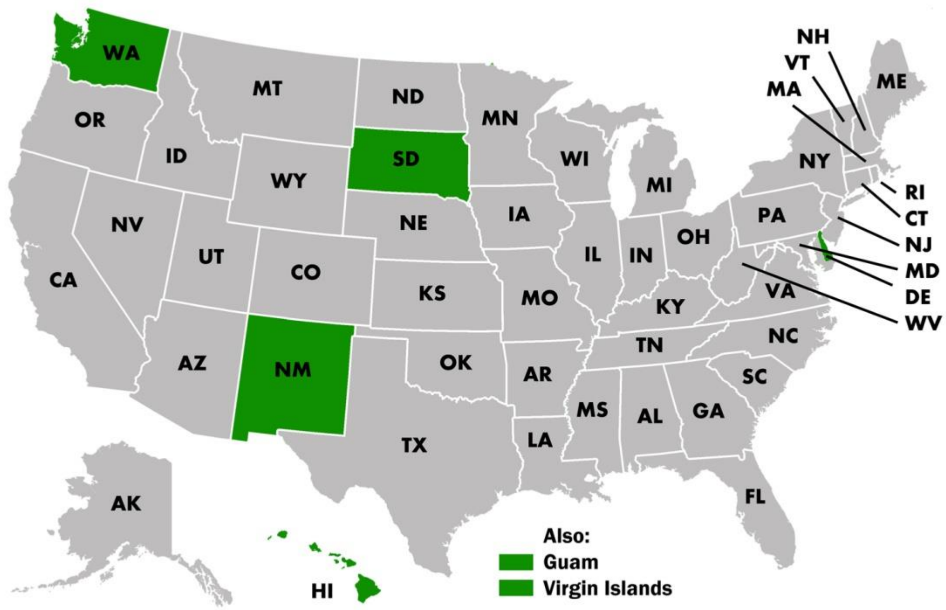
Most states do not tax real estate commissions. Only seven of the surveyed jurisdictions[36] assess either a sales tax or a business and occupation tax on real estate commissions. These states are shown in **green** in the map below.

[34] *See* Phil Schlesinger, *The Taxability of Services* (CCH/Wolters Kluwer 2014) (citing the definition in W.V. Reg. 110-15-8, and noting that most states' definitions align closely with West Virginia's).

[35] AZ, CT, DE, GU, HI, IA, KS, MS, NM, SD, TX, VI, WA, WV. See the *Sales Tax on Services* Annual Report for more specific information on each state.

[36] DE, GU, HI, NM, SD, VI, WA.

Figure 4. Jurisdictions Imposing Taxes on Real Estate Commissions[37]



No jurisdictions added a tax on real estate commissions during the past two years.

Services that are related to real estate transactions are typically taxed like professional services. Eight state-level jurisdictions[38] tax property management, for example, and nine jurisdictions[39] tax land surveys.[40]

[37] Based on research conducted by Legal Research Center, Inc. in January 2015.

[38] CT, DE, GU, HI, NM, SD, VI, WA.

[39] DE, GU, HI, NM, SD, TX, VI, WA, WV.

[40] According to LRC's research, a variety of tangentially related services may also be taxed, including but not limited to services in the following categories of potential relevance to the real estate industry:

- Agricultural (e.g., landscaping)
- Construction (e.g., well drilling, general services).
- Transportation (e.g., courier services, bus and taxi operations)
- Storage (e.g., mini-storage and other warehousing
- Utilities (e.g., telephone, water, natural gas)
- Finance and insurance (e.g., investment counseling, financial reporting).
- Personal services (e.g., upholstery cleaning)
- Business (e.g., ad sales, employment agencies, secretarial services).
- Computer (e.g., software, ISP hosting, data processing)

C. Recent Legislative Changes

Between March 2014 and January 2015, 29 jurisdictions[41] revised their sales tax laws, but many of the changes were minor or not related to the surveyed services. The most significant changes that were enacted or became effective during the past year include the following:

- During its 2013 legislative session, **Arizona** modified its laws (effective January 1, 2015) to provide that gross proceeds from a contract with a real property owner to maintain, repair, or replace existing property (but not to modify property) are deductible from taxable proceeds; during its 2014 legislative session, Arizona redefined "modification" and clarified that *de minimus* modification activities do not subject an entire contract to the prime contracting tax.
- Effective July 1, 2015, **Iowa** revised its statutes to provide that environmental testing services are not subject to the state's sales tax.
- **Kansas** added a tax exemption for the sale of services related to the construction or remodeling of certain agricultural businesses.
- **Mississippi** excluded from its tax that portion of a total contract price that is attributable to design or engineering services, provided that the engineering services are performed by a professional engineer who is also the general or prime contractor.

- Automotive (e.g., washing, service)
- Amusements (e.g., bowling alleys, cable TV)
- Other professional (e.g., accounting, architectural design)
- Leases and rentals (e.g., car rentals, limos, mobile home parks)
- Fabrication, Installation, and Repair (e.g., repair labor, custom fabrication, service contracts)

[41] AL, AZ, CT, FL, GA, HI, IL, IN, IA, KS, LA, ME, MN, MS, MO, NJ, NM, NY, NC, OH, PR, RI, SC, TN, UT, VT, WA, WI, WY.

- **Puerto Rico** increased its territory-wide sales tax.
- **Wisconsin** added a regulation providing that a contractor's lump-sum contract is exempt from the state's sales tax if taxable products and services constitute less than 10% of the contract price.[42]

D. Arguments For and Against Expanding Sales Tax to Services

Proponents of increasing sales tax revenues by taxing services argue that the expansion is necessary, because consumer spending on services has increased while spending on tangible goods has declined.[43] This shift in expenditures decreases sales tax revenue, they say, resulting in budget deficits.[44] Advocates of this position say that the change in spending is partly because the cost of services has risen more rapidly than the cost of goods, and proponents of taxing services believe this trend is expected to continue.[45]

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[42] According to LRC's research, conducted in January 2015. Between March 2014 and January 2015, nine jurisdictions (CT, FL, GA, HI, IA, NJ, PR, UT, WA, WY) revised their laws pertaining to sales tax on services related to the real estate industry, but all of those changes were minor, not substantive, or not relevant.

[43] *See, e.g.*, U.S. Dep't of Labor, Monthly Labor Review, *Explaining the 30-Year Shift in Consumer Expenditures from Commodities to Services, 1982—2012* (Bureau of Labor Statistics Apr. 2014); *Why Have Sales Taxes Grown Slower than the Economy?,* (Legislative Analyst's Office Aug. 5, 2013); Press Release, *Facing Deficits, More States Considering Taxing Services* (Center on Budget & Policy Priorities (CBPP) Aug. 10, 2009); Michael Mazerov, *Expanding Sales Taxation of Services: Options and Issues* (CBPP July 2009). One source states that, between 1929 and 2013, the percent of total personal consumption expenditures devoted to services rose from 43% to 66%, making services "the fastest growing part of consumption." *See* Fred Nicely, Council on State Taxation, & Liz Malm, Tax Foundation, *Broadening the Sales Tax Base—Dos and Don'ts* (Nat'l Conf. of State Legis.).

[44] *See, e.g.,* Editorial, *California Should Extend Sales Tax to Services,* San Jose Mercury News, Aug. 9, 2013.

[45] *Why Have Sales Taxes Grown Slower than the Economy?*,*supra*, at 9, 10. Other news sources report, however, that services consumption has in some recent periods been weaker than anticipated, resulting in an overall lower-than-expected increase in consumer spending. *See, e.g.*, Lucia Mutikani & Andrea Ricci, *U.S. Consumer Spending Misses Expectations on Weak Services* (Reuters June 26, 2014).

Importantly, however, not all research supports this conclusion. In fact, data reviewed by the National Association of REALTORS® Research Division shows that over the past 15 or so years, the shift toward a service economy has been relatively minor: an increase of less than 3% in the private services sector and a decrease of less than 3% with regard to private goods. The table below sets out the data on the national share of the “goods” economy versus the “service” economy from 1997 to 2013.

Table 2. Data on Goods vs. Services Economy (Tabular Form)[46]

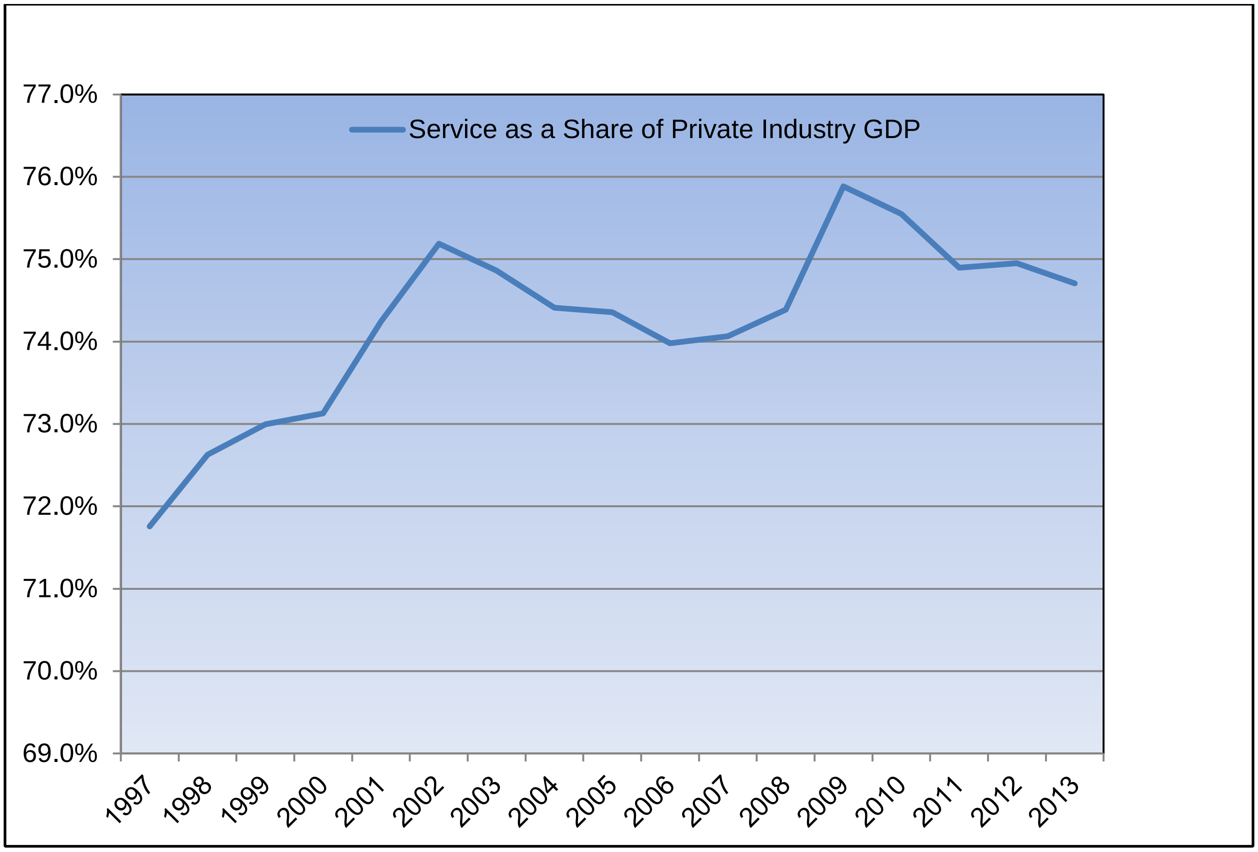
Industry	1997	1998	1999	2000	2001	2002	2003	2004
TOTAL (All Industries)	$8,548,796	$9,030,244	$9,606,777	$10,230,462	$10,565,069	$10,918,961	$11,447,447	$12,208,689
Government	$1,089,437	$1,136,256	$1,198,536	$1,269,481	$1,338,091	$1,416,761	$1,494,914	$1,578,589
% of Total	*12.7%*	*12.6%*	*12.5%*	*12.4%*	*12.7%*	*13.0%*	*13.1%*	*12.9%*
Private	$7,459,359	$7,893,988	$8,408,241	$8,960,981	$9,226,978	$9,502,200	$9,952,533	$10,630,100
% of Total	*87.3%*	*87.4%*	*87.5%*	*87.6%*	*87.3%*	*87.0%*	*86.9%*	*87.1%*
Goods Producing	$2,106,863	$2,160,754	$2,270,570	$2,408,129	$2,376,519	$2,357,595	$2,501,862	$2,720,188
% of Private	*28.2%*	*27.4%*	*27.0%*	*26.9%*	*25.8%*	*24.8%*	*25.1%*	*25.6%*
Services Producing	$5,352,496	$5,733,234	$6,137,671	$6,552,852	$6,850,459	$7,144,605	$7,450,671	$7,909,912
% of Private	*71.8%*	*72.6%*	*73.0%*	*73.1%*	*74.2%*	*75.2%*	*74.9%*	*74.4%*

Industry	2005	2006	2007	2008	2009	2010	2011	2012	2013
TOTAL (All Industries)	$13,023,633	$13,782,387	$14,401,421	$14,636,247	$14,328,006	$14,862,637	$15,431,583	$16,141,152	$16,701,415
Government	$1,655,637	$1,734,936	$1,826,354	$1,918,398	$1,975,819	$2,042,244	$2,062,707	$2,082,838	$2,087,588
% of Total	*12.7%*	*12.6%*	*12.7%*	*13.1%*	*13.8%*	*13.7%*	*13.4%*	*12.9%*	*12.5%*
Private	$11,367,996	$12,047,451	$12,575,067	$12,717,849	$12,352,187	$12,820,393	$13,368,876	$14,058,314	$14,613,827
% of Total	*87.3%*	*87.4%*	*87.3%*	*86.9%*	*86.2%*	*86.3%*	*86.6%*	*87.1%*	*87.5%*
Goods Producing	$2,915,310	$3,134,772	$3,261,235	$3,257,631	$2,978,764	$3,134,597	$3,355,945	$3,521,348	$3,696,411
% of Private	*25.6%*	*26.0%*	*25.9%*	*25.6%*	*24.1%*	*24.5%*	*25.1%*	*25.0%*	*25.3%*
Services Producing	$8,452,686	$8,912,679	$9,313,832	$9,460,218	$9,373,423	$9,685,796	$10,012,931	$10,536,966	$10,917,416
% of Private	*74.4%*	*74.0%*	*74.1%*	*74.4%*	*75.9%*	*75.5%*	*74.9%*	*75.0%*	*74.7%*

[46] Data Source: Bureau of Economic Analysis, U.S. Dept. of Commerce. The GDP, or gross domestic product, is a primary indicator used to gauge a country's economic health. It represents the total dollar value of all goods and services produced over a specific period of time. *See [What is GDP and Why Is It So Important?]* (Investopedia 2015).

This fairly negligible shift over time is illustrated in graphic form in Figure 5 below.

Figure 5. Data on Goods vs. Services Economy (Graphic Form)



Not only does this minor shift in consumer spending not support the expansion of sales tax to services, there are many other compelling reasons why services should not be taxed. The arguments against extending sales taxes to professional services include:

- the discriminatory impact on small and emerging businesses, which often need to rely on outside services and may not be able to afford the extra cost, while large, established companies with in-house expertise would not be taxed for the same services;
- the possible pyramiding of taxes on services and final goods, which results in higher consumer costs;

- the lack of uniformity in tax laws among the states, which in some cases may give companies in the non-taxing states a competitive advantage over their neighbors and creates a competitive disadvantage for states themselves, since companies are discouraged from relocating to or expanding in the service-taxing states, thereby impeding their economic growth and development;
- the fact that sales taxes are considered regressive, meaning that they have a disproportionate impact on the poor, who spend a higher percentage of their total income on purchases of goods and services than the wealthy do;
- the fact that taxes on services are very hard to administer for states and taxpayers alike, because the multi-state nature of customers and service providers often makes it difficult to determine where, when, and how services were utilized—in fact, three states (Florida, Michigan, and Iowa) that swiftly repealed their newly enacted sales taxes on services did so in part because of the complexity of administering the taxes;[47] and
- while legislators may initially offset a services tax with a decreased income tax, there is no guaranty that future legislatures will not reinstate or increase the income tax rate while maintaining the tax on services.[48]

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[47] The multi-state nature of taxes on services hinges on the potential for multiple points of delivery and use of the services, multiple points of creating of the service, multiple sub-service providers, multiple delivery dates of partial products, and multiple taxing jurisdictions. *See* MACPA Position Paper—*Opposing Sales Tax on Professional Services*, available from the Maryland Ass'n of CPAs.

[48] State Tax Resources, *Sales Tax on Professional Services* (American Institute of CPAs (AICPA) 2014); *Sales Tax on Accounting Services* (AICPA 2013); *2015 Recommendations Regarding State Accounting Policy*, *supra*; Kent A. Gernander, *Why Tax Legal Services?*, President's Page, Bench & Bar of Minn. (Feb. 2001).

Income tax reductions coupled with increased sales tax rates or bases--what their proponents have dubbed "Fair Tax" proposals—have additional shortcomings.[49] The purported goal of these proposals is to make state tax systems simpler, fairer, and more hospitable to business development, with no net revenue loss for the state, by replacing all other tax sources with an expanded sales tax. However, the proposals that have been submitted would not achieve these goals.[50]

In reality, eliminating income and/or business taxes, and substituting higher, broader sales taxes, could threaten a state's ability to maintain necessary services over time and significantly increase the taxes that many low- and middle-income households pay. Because these so-called "Fair Tax" proposals would eliminate revenue sources that now provide a significant source of the average state's tax revenue—funds that are vital for K-12 education, healthcare, public safety, social services, and other essential functions—sales tax rates would have to be markedly higher to replace the lost revenue, and/or include goods and services that are now untaxed in most states, including new home sales. Taxing sales of new homes at rates as high as 10%, as some states have proposed, could seriously disrupt the still-recovering housing market. Alternatively, if too many services were exempted from taxation, the state would have to compensate by raising the sales tax rate even higher, or deep cuts in education, transportation, health coverage, and other essential services could result.[51]

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[49] *See* Elizabeth McNichol & Nicholas Johnson, *"Fair Tax" Proposals to Replace State Income and Business Taxes With Expanded Sales Tax Would Create Serious Problems (*Center on Budget and Policy Priorities, Sept. 7, 2010).

[50] *Id.*

[51] *Id.* The article looked at 2010 legislative proposals in Arkansas, Michigan, Missouri, and South Carolina.

Moreover, the detractors argue, a so-called "Fair Tax" would do little to improve a state's business climate or economic performance, because the resulting high sales tax could hurt in-state businesses as residents shift purchases to neighboring states. If a state has to curtail public services because the expanded sales tax fails to make up the lost revenue from the eliminated taxes, economic development would be hampered. In addition, although income tax revenue, in most states, has fallen faster than other forms of revenue as a result of the recession, it is also likely to bounce back more quickly as the economy improves and the jobless rate declines. Abandoning income tax revenue could therefore further undermine long-term revenue adequacy. Making a single tax the sole source of revenue for a state, rather than utilizing a mix of sources, deprives a state of a balanced revenue portfolio.[52]

Although some states already levy taxes on real estate transfers, these taxes are often less than 1%.[53] A new tax of 5% or 10% on residential real estate transactions would have a major, disruptive impact on the real estate market. The purchase of a $200,000 home, if taxed at 10%, would cost the buyer an additional $20,000. This sum would have to be paid at closing unless the lender is willing to roll it into the mortgage. As a result, fewer families would be able to afford a house, which would depress home sales and real estate values, and in turn further reduce property tax collections—delivering yet another blow to local governments already reeling from the decline in the housing market.[54]

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[52] *Id.*

[53] *Id. See also* the *Private Transfer Fees* Annual Report and White Paper (NAR State Issues Tracker Library).

[54] McNichol & Johnson, *supra*, *"Fair Tax" Proposals to Replace State Income and Business Taxes With Expanded Sales Tax Would Create Serious Problems*.

Finally, there is a misconception that businesses (or wealthy business owners) will flock to a state that has eliminated its corporate income tax and sales tax on business purchases, but research on the impact of tax levels on state economic development has produced mixed results. Many studies conclude that, if all other factors are held constant, the level of taxes has little if any impact on the decisions businesses and individuals make about whether to locate in a particular state. Factors other than taxation, such as the education of the workforce, transportation systems, and the natural environment, play a very significant role.[55] In fact, implementing the "Fair Tax" may have some less-than-beneficial consequences for businesses, which could see an immediate drop in sales if residents shop in neighboring states to take advantage of lower sales taxes. Firms' wage costs may also increase if workers demand higher wages in order to be able to afford the higher cost of goods and services in the state.[56] All in all, income-tax-for-sales-tax swaps are not the panacea that their proponents would have legislators and the public believe.

E. Service Industries Take a Stand Against Taxing Services

Officials working in the legal, insurance, automotive, vending, housing, and other industries—including real estate—have taken a stand against the expansion of sales taxes to services. Lawyers in Ohio, for instance, opposed a 5% tax on legal services in

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[55] *Id.* (citing Cristobal Young, Charles Varner, & Douglas S. Massey, *Trends in New Jersey Migration: Housing, Employment, and Taxation* (Princeton University, Woodrow Wilson School of Public and International Affairs, Policy Research Institute for the Region, Sept. 2008); *The Number of High-Income Taxpayers Increased Significantly During a Period With 10 Percent and 11 Percent Tax Rates on High-Income Earners* (Cal. Budget Project., Aug. 2008); Andrew Leigh, *Do Redistributive Taxes Reduce Inequality?*, Nat'l. Tax J. vol. LXI, 1 (Mar. 2008); Richard J. Cebula, *Internal Migration Determinants: Recent Evidence, International Advances in Economic Research,* 11:267–274 (2005)).

[56] *Id.*

that state, arguing that it would impact citizens' access to justice—a fundamental right—by increasing the cost of legal representation.[57] In a far different industry, the Ohio Coin Machine Association and the Bowling Centers Association argued that the 5% tax on services would hit low and moderate income groups the hardest, and could result in a loss of income to business owners, which in turn would result in job losses.[58]

Accounting groups have been particularly active in opposing sales taxes on services, in Ohio and elsewhere.[59] The American Institute of CPAs (AICPA) noted that in 2012, seven states (Arizona, California, Kentucky, Maryland, Michigan, New Jersey, and South Dakota) considered legislation to tax professional services, but due in large part to advocacy efforts by business and professional organizations, none of those proposals was enacted. In 2013, the AICPA reported, 27 bills were proposed in 15 states (Arizona, Connecticut, Iowa, Kansas, Maine, Minnesota, Missouri, North Dakota, Nevada, Ohio, Oregon, Pennsylvania, South Carolina, Texas, and West Virginia).[60] LRC's research demonstrated, however, that none of these efforts resulted in changes that were particularly impactful on the real estate industry.[61] Being a mid-term election year, 2014 was relatively quiet on the legislative front, the accounting group reports—apparently few candidates want to rile their constituencies and risk votes by advocating

[57] Ohio Report, *Industry Reps Rip Plan for Sales Tax Expansion; Say Budget Proposal Could Cut Jobs, Make State Less Competitive* (CONGWER Ohio Vol. 82, Rep. 44, Mar. 6, 2013).

[58] *Id.*

[59] AICPA's *Sales Tax on Accounting Services*, *supra*.

[60] *Id.* The National Conference of State Legislatures reported that in 2013, 16 states considered legislation to implement an increased or expanded sales tax in order to lower or limit increases in income tax rates. *See* Elaine S. Povich, Stateline, *As Revenues Rebounded, Many States Cut Taxes* (Pew Charitable Trusts June 12, 2013). This is one more state than the AICPA reported for the same year, but each group used slightly different criteria.

[61] See the *Sales Tax on Services* 2015 Annual Report for more specific information.

controversial agendas in an election year. Last year, just five state legislatures considered broadening the sales tax base to include professional services, but even those efforts largely failed, as discussed in more detail below.[62] In 2015, a non-election year, things could definitely heat up again.[63]

F. Recent Legislative Proposals to Tax Services

As noted above, recent efforts to expand a state's sales tax base to include professional services are often paired with income tax reductions. Purportedly, these changes are motivated by the idea that combining a tax on services with a reduction in personal income tax makes a state more attractive to businesses, which may then be incentivized to expand or locate in the state, eventually bolstering the economy.[64] Another possible motivation for linking the two changes is that the decrease in income tax is often popular enough, theoretically, to offset or split the opposition to taxation by those whose services would be taxed.[65] These (debatable) arguments notwithstanding,

[62] *See AICPA Tracks State Legislative Trends of 2014* (AICPA Dec. 18, 2014); State Actions Database (Nat'l Conf. of State Legis. Oct. 30, 2014). According to the AICPA, the states that considered legislation related to the taxation of services in 2013 and 2014 include Arizona, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, and Texas.

[63] *See 2015 Recommendations Regarding State Accounting Policy* (AICPA Dec. 2014); State Tax Resources, *Sales Tax on Professional Services* (AICPA 2014). The AICPA reports that 12 state CPA societies have already indicated they anticipate their legislatures will look at adopting taxes on professional services in 2015, but it does not list the states. *See AICPA Tracks State Legislative Trends of 2014, supra*.

[64] *2015 Recommendations Regarding State Accounting Policy*, *supra*.

[65] *Id.*

proposals to swap income taxes for broader-based sales taxes remain largely unpopular.[66]

There are two legislative options for expanding sales taxes to services. The first is a comprehensive approach, in which all services are taxed except for those that are specifically exempted. Most sales-tax-on-goods laws adopt that approach. The other option is a specific-enumeration approach, in which only specifically enumerated services are taxed.[67] Each approach has its pros and cons. A key plus of the comprehensive approach is that newly developed services are automatically and immediately taxable without the need for legislative action. The major disadvantage of that approach, however, is that it is likely to paint with too broad a brush; that is, it may bring too many services into the sales tax base all at once, including some unintended services and imposing an insurmountable administrative burden. It may therefore be more prudent for states to expand their taxation of services—if at all—incrementally, a few services at a time.[68]

On the other hand, it can be a challenge for legislators who wish to tax only specifically enumerated services to unambiguously identify the services they intend to tax. After all, most legislators are not business experts. One possible methodology to aid in this effort is to piggyback onto standardized lists and definitions developed in other contexts, like the North American Industry Classification System and the North American Product Classification System. Even then, however, newly developed or

[66] Rasmussen Reports, *31% Favor Eliminating a State's Income Tax in Exchange for Higher Sales Taxes*, (Jan. 23, 2013). The report indicates that the public is generally just as unenthusiastic as business groups about the idea of more sales taxes, even if income taxes are reduced.

[67] Mazerov, *supra*, *Expanding Sales Taxation of Services: Options and Issues*.

[68] *Id.*

newly offered services could require legislative action if they are to be included in the taxable-services category.[69] In any event, proposals for expanded sales tax are a recurring legislative theme.

Recent sales-tax-for-income-tax swaps have met with mixed success. In **Kansas**, legislators funded income tax cuts in part by setting the sales tax rate at a higher rate than scheduled.[70] The sales tax base was not expanded to tax any products or services that were not previously subject to the tax. In **Missouri**, by contrast, a bill to dramatically cut income tax rates was passed by the legislature, but vetoed by the Governor. The veto was sustained.[71] The Missouri bill originally would have funded the income tax cuts with a small sales tax increase, but that increase was removed over objections that it would impose an undue burden on those living on a fixed income.[72]

In other locales, attempts to increase sales tax revenues by expanding the tax base also achieved mixed results. In July 2014, councilmembers in the **District of Columbia** voted to expand the District's sales tax base to include previously untaxed services such as car washes, carpet cleaning, and bowling alleys. The expansion also brought fitness services under the sales tax umbrella, prompting health clubs and training studios to label the measure a "fitness tax" or "yoga tax."[73] In **Kentucky**, by

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[69] *Id.*

[70] The sales tax will decrease from 6.3% to 6.15%, but the rate was scheduled to decrease to 5.7% on July 1, 2013. *See* Kan. HB 2059, § 3 (2013).

[71] *See* *Following Vote to Sustain Veto of House Bill 253, Gov. Nixon Releases Funds for Education, Mental Health and Other Priorities in Fiscal Year 2014 Budget*, Governor's Press Release (Sept. 12, 2013).

[72] *Id.*

[73] *See* *Effective October 1 the District of Columbia Sales Tax Extends to Additional Services* (D.C. Office of Tax & Rev. Sept. 25, 2014).

contrast, a 2014 legislative proposal to expand the sales tax to various services (including landscaping services, but no other professional real-estate services) did not pass.[74] Nor did three proposed measures in **Connecticut** to *eliminate* taxes on services, two of which related to medical services and one of which related to consultant services.[75]

As noted above, the American Institute of CPAs, which tracks legislative trends pertinent to that profession, reports that 12 of its state societies anticipate their legislatures will look at adopting taxes on professional services in 2015.[76] One notable example is Maine. In November 2014, Maine's Governor, Paul LePage, announced that he wants to completely eliminate the state's individual income tax in 2015 and replace it by broadening the sales tax base.[77] Exempting services reportedly results in a loss of $1.2 billion in tax revenue, so the expansion would, he says, help offset the projected loss of $1.4 billion from eliminating the income tax.[78] Maine's legislative activity, and efforts to curtail it, as well as that in other recently active states, are discussed in conjunction with advocacy efforts on the part of REALTORS® in Part III below.

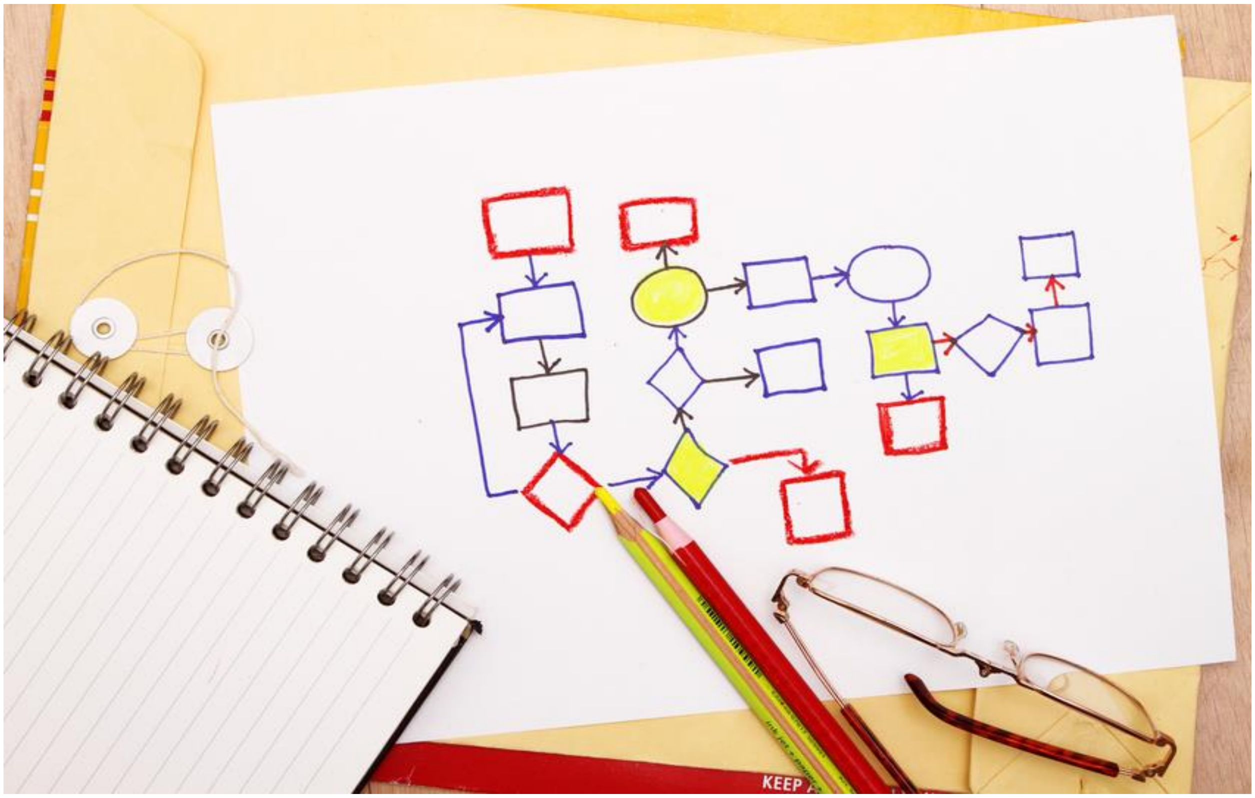
[74] Ky. 2014 H.B.220.

[75] Conn. H.B. 5175, 5202 (2014) (to repeal the tax on cosmetic medical procedures); Conn. H.B. 5190 (2014) (consultant services).

[76] *AICPA Tracks State Legislative Trends of 2014, supra.*

[77] Kyle Pomerleau, *Maine's Governor Proposes to Replace the Income Tax with a Broader Sales Tax* (Tax Found. Tax Policy Blog Nov. 20, 2014).

[78] *Id.*



III. REALTORS® MOBILIZE TO DEFEAT SALES-TAX-ON SERVICES LEGISLATION

While legislation to expand the sales tax base has had some limited success, there were some notable failures, fueled in part by opposition from state REALTOR® associations, as the following examples from the last few years demonstrate.

A. Louisiana

In Louisiana, Governor Bobby Jindal made a strong push in 2013 to abolish the state's personal and business income taxes, as well as the franchise tax, and replace them with increased sales tax rates, a new tax on cigarettes, and a sales tax on business services. The Governor's plan, which was never considered by the Legislature in the form proposed by the Governor, would have increased the general sales tax from 4% to 6.25%.[79] The Governor's goal was to keep taxes as low as possible, while making a switch that would be revenue neutral.[80]

The original proposal placed professional services under the sales tax.[81] Norman Morris, then-Senior Vice President of Governmental Affairs with Louisiana REALTORS®, and now their CEO—met with the Governor's staff at an early stage to discuss the professional services tax. "We made the point that we could identify ten to twelve professionals in a real estate transaction who would be subject to such a tax," Morris said. "Real estate helps keep the state afloat, and it's important not to do any harm" to that sector. Following these

"Real estate helps keep the state afloat, and it's important not to do any harm" to that sector.

Norman Morris, Louisiana REALTORS®

[79] Initially, the Governor proposed increasing the sales tax to 5.88%, but closer analysis showed that that rate would not generate sufficient revenue to replace the income tax. *See* Michelle Millhollon, *Jindal Scraps His Tax Plan,* The Advocate (Baton Rouge, La.), Apr.15, 2013.

[80] *Gov. Jindal: Eliminating Income Tax Will Create Jobs,* Governor's Press Release (Mar. 14, 2013).

[81] Telephone interview with Norman Morris, Louisiana REALTORS® (Oct. 10, 2013).

conversations, all real estate references (except for rental storage units) were redacted from the proposal.[82]

Governor Jindal's plan met with strong opposition for many reasons. Some opponents doubted that the plan would raise as much money as the Governor claimed, leading them to question whether the plan would in fact be revenue neutral. Others—including business groups,[83] as well as advocates for low- and moderate-income taxpayers[84]—questioned the fundamental fairness of the shift. Ultimately, the opposition proved to be too strong, and the Governor abandoned his plan. Instead, he called on legislators to develop a tax overhaul plan of their own.[85] Legislators did in fact propose several bills that would have called for a gradual phase-out of state income taxes,[86] but none of those bills met with any success.

B. Maine

In Maine, legislators considered a broad tax reform proposal in 2013.[87] The proposal would have extended the state sales tax to all services. The Maine Association of REALTORS® mobilized in opposition to the proposal, and when a hearing on the bill

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[82] *Id.*

[83] Jeff Adelson, *Louisiana Association of Business and Industry to Oppose Jindal's Tax Plan if It Raises Taxes on Business,* Times Picayune, Mar. 27, 2013.

[84] Jeff Adelson, *Louisiana Religious Leaders Speak Out Against Jindal Tax Plan,* Times Picayune, Mar. 18, 2013.

[85] Millhollon, *supra, Jindal Scraps His Tax Plan*.

[86] For example, HB 271 would have phased out income taxes over a ten-year period beginning in 2014. HB 505 and HB 507 would also have phased out income taxes over ten years, but the phase-out in those bills would have begun in 2016. HB 632 called for a five-year phase out, beginning in 2015. All of these bills were considered by the House Ways and Means Committee, but did not advance beyond the committee stage.

[87] Me. LD 1496 (2013). The bill was never formally drafted, but was presented as a concept draft.

was held, 61 witnesses appeared to testify. Most of the witnesses opposed the measure.[88] According to Megan Sanborn, Communications and Government Affairs Manager for the Maine Association of REALTORS®, the bill died in the Taxation Committee by a unanimous vote. Sanborn notes that the tax reform issue is certain to be revisited. A tax expenditure working group was tasked with trying to figure out a way to cut $40 million from the state budget.[89] Sanborn reports that Governor LePage's new budget has been released, and it does not include a tax on all services; specifically, real estate services do not seem to be affected, she says, at least for the time being.[90]

C. Minnesota

Minnesota is another state that considered broadening the sales tax base as a way of augmenting state taxes. Governor Mark Dayton's proposed budget would have extended the state's sales tax to services. The Governor's proposal did not identify the services that would be subject to taxation, but Christine Berger of the Minnesota Association of REALTORS® said that the Association took the proposal to mean that *all* services would be taxed.[91] The augmented sales tax revenues would have been used to lower the overall sales tax rate, the property tax rate, and the corporate income tax.[92] The Governor's tax proposals were poorly received. The Minnesota Association of

[88] *Recap of the Maine Association Tax Reform Issue Campaign* (Maine Ass'n of REALTORS® 2013).

[89] Email from Megan Sanborn, Communications and Government Affairs Manager, Maine Ass'n of REALTORS®, to Stacey Supina, Director of Research, Legal Research Center, Inc. (Sept. 24, 2013).

[90] Email from Megan Sanborn, Communications and Government Affairs Manager, Maine Ass'n of REALTORS®, to Randall Holbrook, Senior Research Attorney, Legal Research Center, Inc. (Jan. 30, 2015).

[91] Telephone interview with Christine Berger, Minn. Ass'n of REALTORS® (Sept. 13, 2013).

[92] *Governor Dayton's Budget Proposal Part 2: Tax Reform* (Minn. Budget Project Jan. 31, 2013).

REALTORS®, with assistance from the National Association of REALTORS®, mobilized against the tax. Association members lobbied legislators to better define the services that would be subject to taxation, or to defeat the proposed tax. And REALTORS® were not the only professional groups vehemently opposing the legislation. Advertising agencies and law firms, especially those without out-of-state clientele, were concerned about losing business to competitors in other states.[93] As the law currently stands, some real estate services are subject to sales tax, such as building maintenance and landscaping services, but, generally speaking, professional services are not.[94]

D. Missouri

According to Elizabeth Mendenhall, a Missouri REALTOR®, efforts to tax professional services in that state have been driven by Rex Sinquefield, a billionaire "political philanthropist."[95] Sinquefield believes that changing the tax structure will improve the state's economic environment, and his plan includes extending the state's sales tax to services. The state REALTORS® Association has been aware of his efforts since 2005. Between 2009 and 2010, Sinquefield's efforts intensified, and in 2011 he

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[93] John Welbes, *Dayton's Service Sales Tax Plan Lands with a Thud,* St. Paul Pioneer Press, Jan. 24, 2013.

[94] *See* Minn. Dep't of Rev., *Taxable Services in Minnesota*.

[95] Telephone Interview with Elizabeth Mendenhall, RE/MAX Boone Realty, Columbia, MO (Jan. 26, 2015). Sinquefield established the Show-Me Institute, which touts itself on its website as

> a research and educational institute dedicated to improving the quality of life for all citizens of Missouri by advancing sensible, well-researched solutions to state and local policy issues . . . The work of the institute is rooted in the American tradition of free markets and individual liberty. The institute's scholars seek to move beyond the 20th-century mindset that every problem has a government solution. Instead, they develop policies that respect the rights of the individual, encourage creativity and hard work, and nurture independence and social cooperation.

circulated an initiative petition to place the services-tax issue on the statewide ballot.[96] Missouri REALTORS® took to the courts to keep Sinquefield's initiative off the ballot, and they succeeded because it was not properly drafted. Although it is relatively easy to get an initiative placed on the ballot in Missouri, ballot measures must account for their budgetary impact. Missouri REALTORS® were able to establish that Sinquefield's initiative impact statement was faulty, and thus misleading to voters.[97]

According to Mendenhall, Sinquefield has invested a lot in political campaigns, and over time many of his favored candidates have made their way into the Legislature, which means he may now have more legislative clout. Sinquefield has invested $1 million in gubernatorial campaigns, and hundreds of thousands in other elections. At the same time, however, the political process has become more public, such that more people are aware of what is happening behind the scenes. Transparency exposes contributions, and candidates know that their reputations may be tainted by taking money from Sinquefield. As a result, there has been a "citizen backlash," Mendenhall says.[98]

Because Missouri REALTORS® have a strong team in place, and they have utilized the services of an effective communications consultant, they have been successful in their attempts to defeat proposed tax legislation with traditional lobbying efforts.[99]

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[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

E. North Carolina

A 2013 proposal to expand the sales tax to services, and also to expand the real estate transfer tax, received much attention in North Carolina.[100] The North Carolina Association of REALTORS® (NCAR) with assistance from the National Association of REALTORS® mounted a strong campaign against the sales tax extension, and presented the public and legislators with detailed reasons why the sales tax and transfer tax extensions were bad policy. With regard to the sales tax, the Raleigh Regional Association of REALTORS® argued that taxing professional services would have devastating effects on the still-recovering housing market.[101] Licensed professionals would have to pass the sales tax on to the consumer in the form of increased costs for the services provided. If all—or even some—of the professional services involved in home building and home buying were taxed, it would raise the costs of the transaction significantly, pricing some buyers out of the market.[102]

Ultimately, the broad sales tax extension was not adopted. The tax legislation that did pass included a switch to a flat-rate income tax; an increase in the sales taxes on electricity; and extending the sales tax to a few specifically enumerated services, such as admissions to movies and live entertainment events.[103] Real estate and closing

[100] Anna Oakes, *No NC Income Tax, Higher Sales Tax?,* Wautauga Democrat, Jan. 17, 2013.

[101] RRAR Policy Positions (July 19, 2012), at 6, *available at* rrar.com.

[102] *Id.*

[103] Eric Frazier, *Key Changes in N.C. Tax Policy,* Charlotte Observer, Aug. 10, 2013.

services were *not* taxed in the final legislation; the most closely related service that was part of the enacted sales-tax extension was landscaping services.[104]

According to Cady Thomas, Director of Government Affairs for the North Carolina Association of REALTORS®, 2013 was the first time in North Carolina history that Republicans controlled the House, Senate, and Governor's Office.[105] They all promised broad, sweeping tax reform, Thomas said, more from a philosophical standpoint than based on a need to generate more revenue.[106] The original tax reform bill proposed that year would have eliminated corporate and personal income taxes, and extended the sales tax to *all* services. Sales tax would have been imposed on all of the closing services listed on a HUD statement at a rate of 8 to 9%. In addition, there would have been a business license tax on the *assets* of businesses, not just on profits. These changes, together with the proposed 1% statewide real estate transfer tax, would have made housing less affordable, and would have hurt the state economically. One of the key features attracting businesses to North Carolina has been the relative affordability of housing, so the fight was on to preserve that affordability.[107] And in this case, real estate interests prevailed.

Given the state's budget deficit, Thomas expects to see more tax reform proposals, but not as wide-sweeping as those originally proposed. No tax bills have

[104] Telephone interview with Cady Thomas, Director of Government Affairs, N.C. Ass'n of REALTORS® (Jan. 28, 2015).

[105] *Id.*

[106] *Id.* In 2009, by contrast, a proposal was made that was based more on revenue generation goals than on policy. The Revenue Law Study Committee (an interim study committee) recommended that the General Assembly look at extending the sales tax to services at that time as well. Nothing came of the proposal because of the opposition that was mobilized. A small sales tax increase passed, but it was allowed to expire in 2012. *Id.*

[107] *Id.*

been filed yet in the 2015 legislative session, which opened on January 28, and Thomas has not heard much recent talk about the issue. Thomas believes there may not be much activity on the sales-tax front until after April 15, when all income tax returns have been filed. The General Assembly may wait to see what taxes are paid, and whether revenues are higher than projected.[108] The Governor's budget is due in March, but he is not expected to impose wide-sweeping changes that will affect many people—the Governor is, by the way, up for re-election in 2016.[109]

F. Ohio

> *A 5% sales tax on services would "deepen the financial burden and create a serious headwind to a sector of the economy that has begun to display some strength."*
>
> Ohio Association of REALTORS®

In another sales-tax-for-income-tax-swap state, the 26,000-member Ohio Association of REALTORS® (OAR) opposed a 5% sales tax on real estate services in 2013 because, the Association said, it would unduly increase the cost of housing and business throughout the state.[110] The OAR argued that the expansion of the sales tax to every service associated with a real estate transaction would threaten a fragile, but critical, sector of the economy and place an unnecessary financial burden on Ohio property owners. Adding to the cost of a home purchase, as would occur if the 5% sales tax on services

[108] *Id.*

[109] *Id.* The real tax issue for North Carolina REALTORS®, Thomas says, is the cap on the mortgage interest and property tax deductions ($20,000 per filer). The cap was once unlimited. The revenue deficit will make it hard to protect those deductions.

[110] OAR Daily Buzz, *OAR Opposes Expansion of Ohio Sales Tax to Services* (Ohio Ass'n of REALTORS® Mar. 6, 2013).

was applied, would "deepen the financial burden and create a serious headwind to a sector of the economy that has begun to display some strength."[111]

To get this point across, Bob Fletcher, OAR's Chief Executive Officer, testified before the Ohio House Ways & Means Committee in opposition to Bill 59.[112] He argued that taxing essentially every service involved in purchasing real estate would make housing less affordable for those who can least afford it—namely, first-time homebuyers, who represent nearly 40% of Ohio buyers. In addition, a sales tax on commercial rent leases would pose a threat to future economic development by adding to the cost of business operations in the state. Fletcher's testimony and the efforts of the OAR were instrumental in defeating the legislation. In the end, the Conference Committee made a series of eleventh-hour changes to the legislation, including eliminating the expansion of the sales tax base to include professional services.[113]

G. Pennsylvania

The Pennsylvania Association of REALTORS® (PAR) was similarly successful back in 2010 in fending off proposed taxes on professional services in real estate transactions.[114] As members of the state association rallied at the state capitol voicing their opposition to the proposed tax, PAR's then-president, Don Roth, unveiled a survey

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[111] *Id.*

[112] *See* OAR Daily Buzz, *OAR Testifies in Opposition to Ohio Sales Tax Expansion* (Ohio Ass'n of REALTORS® Mar. 7, 2013). The full text of Fletcher's testimony is reprinted in Appendix 3.

[113] Bob Fletcher, OAR Daily Buzz, *REALTORS Score a Significant Victory . . . Sales Tax on Services Not Part of Ohio's Budget* (July 1, 2013).

[114] Samantha Elliott Krepps, *Realtors® Oppose Gov. Edward G. Rendell's Proposed Tax on Professional Services in Real Estate Transactions—Survey reveals Pennsylvanians said 'no' to the proposed plan that would increase the cost of buying and selling a home* (Pa. Ass'n of REALTORS® Mar. 26, 2010).

revealing that 70% of the Pennsylvanians polled opposed the proposed taxes, which would drive up costs for consumers in both the home-buying and the home-selling contexts. Roth announced that the tax would result in thousands of additional dollars spent by consumers, which would make housing less affordable and beyond the reach of many in the state. The proposal included a 4% tax on real estate agent/broker services, legal services, mortgage originations, home inspections, surveys, title searches, construction services, architectural series, and site preparation. Roth was concerned about reduced demand for housing, which would be bad for the entire state and protract the time needed for an economic recovery.[115]

H. Rhode Island

In April 2011, over 100 Rhode Island REALTORS® rallied at the State House and met with their legislators to oppose a proposed sales tax on services.[116] In addition, the state's REALTORS® flooded their legislators with calls and emails to fight the legislation. The Rhode Island Association of REALTORS® noted that the biggest issue for REALTORS and other small business owners during that session was Governor Chafee's plan to charge a 6% sales tax on hundreds of services, including maintenance, inspections, septic pumping, and pest control. The final budget did not tax brokerage services or real estate settlement services.[117] As of early 2015, Rhode Island still does

[115] *Id.*

[116] *See What Happened at the State House This Year?*, R.I. State-Wide MLS (2015).

[117] *Id.*

not have a broad-reaching sales tax on services, and occupational and professional services are generally not subject to the state's sales tax.[118]

I. Texas

In Texas, where past legislative sessions have included consideration of expanding the sales tax base to include professional services—including real estate services—the Texas Association of REALTORS® (TAR) "steadfastly opposes" such efforts.[119] Several groups in that state have already released proposals calling for expansion of the sales tax base to include real estate services, but the Association believes that any tax restructuring should not place an undue burden on the real estate industry, or hamper continued economic recovery in Texas. TAR reports that "studies from the National Association of REALTORS®, the Real Estate Center at Texas A&M, and other industry think-tanks confirm that adding a tax on real estate commissions would have a detrimental effect on the housing industry—one study indicates an overall 3% drop in the real estate market."[120] In September 2014, the average home sale in Texas was

> *"Studies from the National Association of REALTORS®, the Real Estate Center at Texas A&M, and other industry think-tanks confirm that adding a tax on real estate commissions would have a detrimental effect on the housing industry—one study indicates an overall 3% drop in the real estate market."*
>
> Texas Association of REALTORS®

[118] *See Sales Tax on Services* Annual Report (NAR State Issues Tracker Library 2015) (citing Rhode Island statutes and regulations including R.I. Gen. Laws §§ 44-18-7, -12, -12.1, -18 (2014); 01-086-081 R.I. Code R. §§ 87-77, 91-27 (2014)).

[119] *2015 Public Policy Statements—Legislative Priorities for the 84th Texas Legislature* (Tex. Ass'n of REALTORS® 2015).

[120] *Id.*

$221,000; depending on commission rate and local options, the tax proposals could add over $2,000 due at closing.[121]

The debate in Texas has been waged since at least 2003, when the Texas Legislature initiated a proposal to expand the sales tax to include professional (including real-estate) services in an effort to balance the state budget and reduce property taxes.[122] TAR explained in its 2014 Position Statement that

> [t]his tax would have, in effect, been a personal income tax to a small group of Texans. TAR opposes any tax that unfairly penalizes individuals because of their profession. Furthermore, a tax on services is a regressive tax, which harms our citizens in our state who can least afford such an added expense of doing business in Texas.[123]

The Position Statement also cites a 2005 Study commissioned by the National Association of REALTORS® that analyzed what impact a tax on real estate services would have on home prices. "Assuming a 6.25% sales tax rate for Texas and including the most common services associated with the purchase of a house, the study put the increased cost of purchasing a house at $775. Add the 2% local option, and the cost rises to $1,022."[124]

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[121] *Id.*

[122] *State Candidate Questionnaire: The Texas REALTOR® Position* (Tex. Ass'n of REALTORS® Feb. 24, 2014).

[123] *Id.*

[124] *Id.*

J. Washington

Three years ago, in McCleary v. State,[125] the Washington Supreme Court ruled that funding education is a primary obligation of the state, that the state was not meeting its obligation, and that funding was inadequate.[126] The court concluded that the state had to do a better job, and laid out a partial roadmap for the state to follow. The court gave the state six years to comply with its order. According to Nathan Gorton, Government Affairs Director of Washington REALTORS®, there was a lot of dispute about how to accomplish the court's mandate, with the Washington Education Association saying that $15 billion more was needed, and Republicans in the Legislature saying that $3 billion more would do.[127]

In September 2014, the court ruled that the Legislature was not moving fast enough toward the funding goals, and held it in contempt.[128] The sanction for the contempt would not be imposed until after the last day of the 2015 session. In an effort to become compliant, many funding ideas were raised: slash social services; or increase gross receipts taxes, capital gains taxes, or cap and trade taxes.[129] Washington's Governor, Jay Inslee, focused on the issue of extending sales taxes to services, as did several legislators. According to Gorton, many legislators said that if

[125] *McCleary v. State*, 269 P.3d 227 (Wash. 2012).

[126] Telephone Interview with Nathan Gorton, Government Affairs Director, Washington REALTORS® (Jan. 27, 2015). *See also* *Washington Supreme Court Holds that State Is Not Adequately Funding Education* (Nat'l Educ. Access Network 2015).

[127] Gorton interview, *supra*.

[128] Joseph O'Sullivan, *Supreme Court Finds Legislature in Contempt on Education Funding*, Seattle Times, Sept. 11, 2014.

[129] Gorton interview, *supra*.

they took that route, they could "go home tomorrow," as the tax would raise plenty of money.[130]

From a real estate perspective, it may come down to a choice between a sales tax on real estate transactions, Gorton says, or an increase in gross receipts taxes on real estate businesses. Real estate businesses now pay gross receipts taxes at the second highest rate in the state, behind only gamblers and nuclear waste disposal businesses. Gorton is optimistic, however, that the issue has been laid to rest for the current session. Although he is uncertain how the issue will shake out in the long run, he believes there is certain to be some impact on real estate. For the time being, "[t]here still is some talk, but it is more muted."[131]

The Governor's rationale for the tax-on-services proposal is that the tax system is based on a twentieth-century model of manufacturing. The economy has shifted to services, he says, and services are not adequately taxed. REALTORS® counter that argument in two ways:

- It is not clear how much truth there is to the notion that the economy is service-based. According to Gorton, the State Economist made that claim at a recent event, but when questioned about it, he waffled and stated he was not sure the claim could be supported.
- Even if the economy as a whole is more service oriented, before taxing real-estate professionals and transactions, we need to take a look at only real

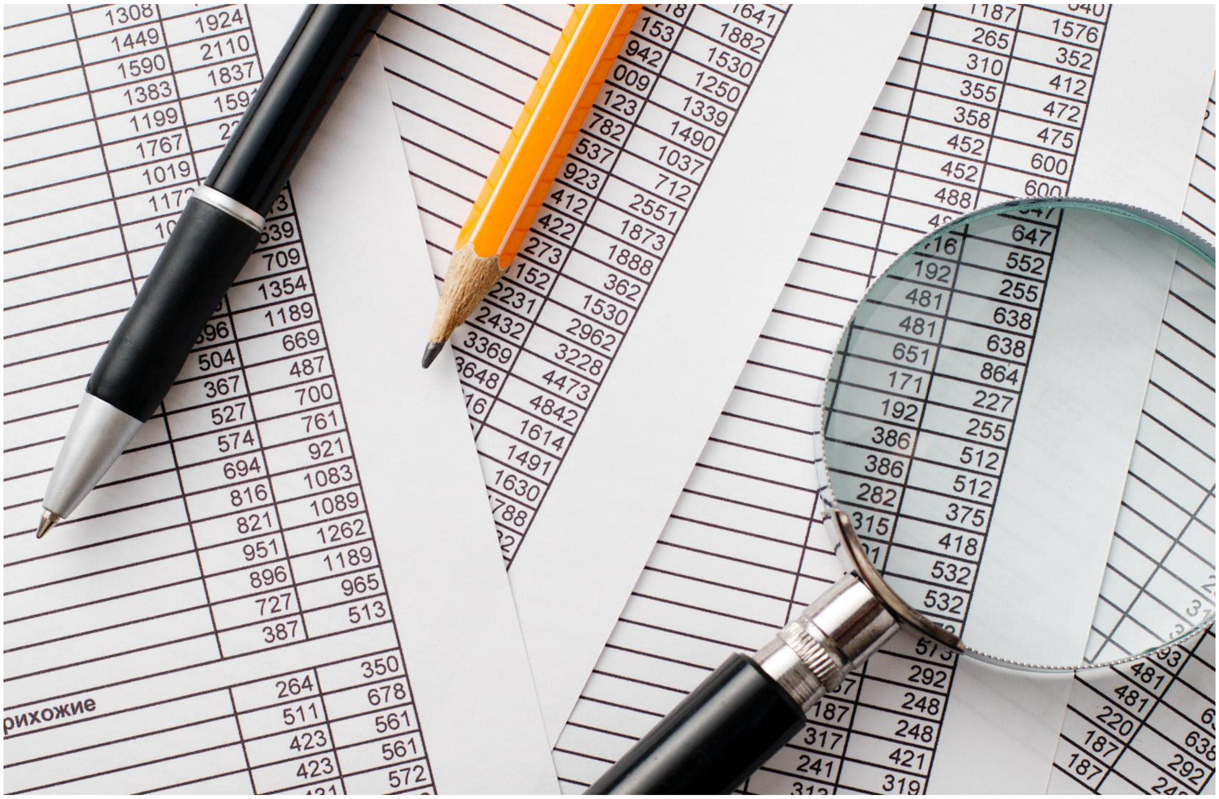
[130] *Id.*

[131] *Id.*

> estate services. Are more people using the services of real estate professionals now than were utilizing those services 20 to 30 years ago?

Gorton is optimistic, at least as far as sales taxes go. He believes there is an implicit understanding of the REALTORS®' position on the sales-tax-on-services issue, but even so an increase in the gross receipts tax could be in the works. Bills proposing taxes on other services have been dropped, and there is no bill this session to extend the sales tax to real estate services.[132]

[132] *Id.*



IV. CONCLUSION

Broadening the sales tax base to include services—an increasingly popular concept in recent years—is not a state revenue panacea. Lobbying efforts by state and local REALTOR® associations help remind policymakers of the real consequences of taxing services, such as inflated home prices at a time when the real estate market is just beginning to recover and can ill afford another setback. Extending the tax to just a few business-related services, as happened recently in Minnesota, could be as far as the public and business communities are willing to let the idea go. But the taxation of even some services could prove to be the proverbial camel's nose in the tent if action is not taken to stop the movement in its tracks.

The issue of taxing services is certain to be revisited in the coming years, which is why many state REALTOR® Associations are taking a firm stance. Forewarned is forearmed, and familiarity with the real facts surrounding the taxation of professional services can be a formidable weapon in the advocacy arsenal. This White Paper and the sources cited herein provide some powerful ammunition for defeating legislative proposals to tax real estate services. The potentially devastating effects on REALTORS®, homebuyers, and state economies in general strongly militate against the expansion of sales taxes to real estate services.

Bibliography

Sources (in order cited)

Financing State and Local Government (American Government Online 2013).

U.S. Const. art. 1, sec. 8, cl. 1

Ga. Const. Art. VII, Taxation and Finance; N.Y. Const. Art. XVI, Taxation; Tex. Const. art. 8, Taxation and Revenue

M. David Gelfand, Joel A. Mintz, & Peter W. Salsich, Jr., *State and Local Taxation and Finance* (3d ed. 2007)

Scot Drenkard, Liz Emanuel & Jordan Yahiro, *State and Local Sales Tax Rates Midyear 2014* (Tax Found. Sept. 16, 2014)

State Sales and Use Taxes 2013 (Nat'l Conf. of State Legis. 2013)

LRC's 2015 *Sales Tax on Services* Annual Report, www.legalebook.com

Brad Broberg & Vicki C. Krueger, *State and Local Taxation—A White Paper Report* (NAR Oct. 2013), www.legalebook.com

Richard Borean & Liz Malm, *Map: State Sales Taxes and Clothing Exemptions* (Tax Found. Nov. 19, 2013)

Campaign for Tobacco Free Kids, *Map of Cigarette Tax Rates* (Aug. 1, 2013)

Janet Novack, *Travelers Alert: The 10 U.S. Cities that Tax Tourists the Most* (Forbes Oct. 10, 2012)

Lucas Oil Stadium, http://en.wikipedia.org/wiki/Lucas_Oil_Stadium

Minneapolis City Council Approves Tax Shift for Vikings Stadium (MPRNews.org May 24, 2012) http://www.mprnews.org/story/2012/05/24/minneapolis-city-council-tax-shift-vikings-stadium

Tax Foundation, *Gross Receipt Taxes*

Liz Malm & Ellen Kant, *The Sources of State and Local Tax Revenues* (Tax Found. Jan. 28, 2013)

U.S. Census Bureau, Tax Foundation calculations (based on 2010 data)

Nat'l Conf. of State Legis. calculations based on data from the U.S. Census Bureau (2011)

Tax Foundation's *Weekly Map: Sources of State and Local Tax Revenue: Sales, Excise, and Gross Receipts Tax* (Tax Found. Feb. 4, 2013)

Nick Kasprak, *Weekly Map: Sources of State and Local Tax Revenue: Sales, Excise, and Gross Receipts Tax* (Tax Found. Feb. 4, 2013)

Wash. Rev. Code §§ 82.04.050, .051, .070, .080, .220, .250, .255, .260, .263, .280, .290, .29002, .320, .4281, .44525; .08.010, .020 (2012)

Wash. Admin. Code 458-20-138, -146, -151, -163, -207, -224 (2013)

State Sales and Use Taxes 2013 (Nat'l Conf. of State Legis. 2013)

Phil Schlesinger, *The Taxability of Services* (CCH/Wolters Kluwer 2014)

U.S. Dep't of Labor, Monthly Labor Review, *Explaining the 30-Year Shift in Consumer Expenditures from Commodities to Services, 1982—2012* (Bureau of Labor Statistics Apr. 2014)

Why Have Sales Taxes Grown Slower than the Economy?, (Legislative Analyst's Office Aug. 5, 2013)

Press Release, *Facing Deficits, More States Considering Taxing Services* (Center on Budget & Policy Priorities (CBPP) Aug. 10, 2009)

Michael Mazerov, *Expanding Sales Taxation of Services: Options and Issues* (CBPP July 2009)

Fred Nicely, Council on State Taxation, & Liz Malm, Tax Foundation, *Broadening the Sales Tax Base—Dos and Don'ts* (Nat'l Conf. of State Legis.)

California Should Extend Sales Tax to Services, San Jose Mercury News, Aug. 9, 2013

Lucia Mutikani & Andrea Ricci, *U.S. Consumer Spending Misses Expectations on Weak Services* (Reuters June 26, 2014)

What is GDP and Why Is It So Important? (Investopedia 2015)

Opposing Sales Tax on Professional Services, available from the Maryland Ass'n of CPAs

State Tax Resources, *Sales Tax on Professional Services* (American Institute of CPAs (AICPA) 2014)

Sales Tax on Accounting Services (AICPA 2013)

2015 Recommendations Regarding State Accounting Policy (AICPA Dec. 2014)

Kent A. Gernander, *Why Tax Legal Services?*, President's Page, Bench & Bar of Minn. (Feb. 2001)

Elizabeth McNichol & Nicholas Johnson, *"Fair Tax" Proposals to Replace State Income and Business Taxes With Expanded Sales Tax Would Create Serious Problems (*Center on Budget and Policy Priorities, Sept. 7, 2010)

Cristobal Young, Charles Varner, & Douglas S. Massey, *Trends in New Jersey Migration: Housing, Employment, and Taxation* (Princeton University, Woodrow Wilson School of Public and International Affairs, Policy Research Institute for the Region, Sept. 2008)

The Number of High-Income Taxpayers Increased Significantly During a Period With 10 Percent and 11 Percent Tax Rates on High-Income Earners (Cal. Budget Project, Aug. 2008)

Andrew Leigh, *Do Redistributive Taxes Reduce Inequality?*, Nat'l. Tax J. vol. LXI, 1 (Mar. 2008)

Richard J. Cebula, *Internal Migration Determinants: Recent Evidence, International Advances in Economic Research,* 11:267–274 (2005))

Ohio Report, *Industry Reps Rip Plan for Sales Tax Expansion; Say Budget Proposal Could Cut Jobs, Make State Less Competitive* (CONGWER Ohio Vol. 82, Rep. 44, Mar. 6, 2013)

Elaine S. Povich, Stateline, *As Revenues Rebounded, Many States Cut Taxes* (Pew Charitable Trusts June 12, 2013)

AICPA Tracks State Legislative Trends of 2014 (AICPA Dec. 18, 2014)

State Actions Database (Nat'l Conf. of State Legis. Oct. 30, 2014)

Rasmussen Reports, *31% Favor Eliminating a State's Income Tax in Exchange for Higher Sales Taxes,* (Jan. 23, 2013)

Kan. HB 2059, § 3 (2013)

Following Vote to Sustain Veto of House Bill 253, Gov. Nixon Releases Funds for Education, Mental Health and Other Priorities in Fiscal Year 2014 Budget, Governor's Press Release (Sept. 12, 2013)

Effective October 1 the District of Columbia Sales Tax Extends to Additional Services (D.C. Office of Tax & Rev. Sept. 25, 2014)

Ky. 2014 H.B.220

Conn. H.B. 5175, 5202 (2014)

Conn. H.B. 5190 (2014)

Kyle Pomerleau, *Maine's Governor Proposes to Replace the Income Tax with a Broader Sales Tax* (Tax Found. Tax Policy Blog Nov. 20, 2014)

Michelle Millhollon, *Jindal Scraps His Tax Plan*, The Advocate (Baton Rouge, La.), Apr.15, 2013

Gov. Jindal: Eliminating Income Tax Will Create Jobs, Governor's Press Release (Mar. 14, 2013)

Norman Morris, Louisiana REALTORS®, Telephone interview (Oct. 10, 2013)

Jeff Adelson, *Louisiana Association of Business and Industry to Oppose Jindal's Tax Plan if It Raises Taxes on Business*, Times Picayune, Mar. 27, 2013

Jeff Adelson, *Louisiana Religious Leaders Speak Out Against Jindal Tax Plan*, Times Picayune, Mar. 18, 2013

Me. LD 1496 (2013)

Recap of the Maine Association Tax Reform Issue Campaign (Maine Ass'n of REALTORS® 2013)

Megan Sanborn, Communications and Government Affairs Manager, Maine Ass'n of REALTORS®, Email to Stacey Supina, Director of Research, Legal Research Center, Inc. (Sept. 24, 2013)

Megan Sanborn, Communications and Government Affairs Manager, Maine Ass'n of REALTORS®, Email to Randall Holbrook, Senior Research Attorney, Legal Research Center, Inc. (Jan. 30, 2015)

Christine Berger, Minn. Ass'n of REALTORS®, Telephone interview (Sept. 13, 2013)

Governor Dayton's Budget Proposal Part 2: Tax Reform (Minn. Budget Project Jan. 31, 2013)

John Welbes, *Dayton's Service Sales Tax Plan Lands with a Thud*, St. Paul Pioneer Press, Jan. 24, 2013

Minn. Dep't of Rev., *Taxable Services in Minnesota*

Elizabeth Mendenhall, RE/MAX Boone Realty, Columbia, MO, Telephone Interview (Jan. 26, 2015)

Show-Me Institute

Anna Oakes, *No NC Income Tax, Higher Sales Tax?*, Wautauga Democrat, Jan. 17, 2013

RRAR Policy Positions (July 19, 2012) *available at* rrar.com

Eric Frazier, *Key Changes in N.C. Tax Policy*, Charlotte Observer, Aug. 10, 2013

Cady Thomas, Director of Government Affairs, N.C. Ass'n of REALTORS®, Telephone interview (Jan. 28, 2015)

OAR Daily Buzz, *OAR Opposes Expansion of Ohio Sales Tax to Services* (Ohio Ass'n of REALTORS® Mar. 6, 2013)

OAR Daily Buzz, *OAR Testifies in Opposition to Ohio Sales Tax Expansion* (Ohio Ass'n of REALTORS® Mar. 7, 2013)

Bob Fletcher, OAR Daily Buzz, *REALTORS Score a Significant Victory . . . Sales Tax on Services Not Part of Ohio's Budget* (July 1, 2013)

Samantha Elliott Krepps, *Realtors® Oppose Gov. Edward G. Rendell's Proposed Tax on Professional Services in Real Estate Transactions—Survey reveals Pennsylvanians said 'no' to the proposed plan that would increase the cost of buying and selling a home* (Pa. Ass'n of REALTORS® Mar. 26, 2010)

What Happened at the State House This Year?, R.I. State-Wide MLS (2015)

Sales Tax on Services Annual Report (NAR State Issues Tracker Library 2015)

2015 Public Policy Statements—Legislative Priorities for the 84th Texas Legislature (Tex. Ass'n of REALTORS® 2015)

State Candidate Questionnaire: The Texas REALTOR® Position (Tex. Ass'n of REALTORS® Feb. 24, 2014)

Nathan Gorton, Government Affairs Director, Washington REALTORS®, Telephone Interview (Jan. 27, 2015)

McCleary v. State, 269 P.3d 227 (Wash. 2012)

Washington Supreme Court Holds that State Is Not Adequately Funding Education (Nat'l Educ. Access Network 2015)

Joseph O'Sullivan, *Supreme Court Finds Legislature in Contempt on Education Funding*, Seattle Times, Sept. 11, 2014

Nick Kasprak, *Weekly Map: Sources of State and Local Tax Revenue: Sales, Excise, and Gross Receipts Tax* (Tax Found. Feb. 4, 2013)

Andreea Militaru & Thomas Stratmann, *A Survey of Sales Tax Exemptions in the States: Understanding State Sales Taxes and Sales Tax Exemptions*, Mercatus Center Working Paper No. 14-01 (Jan. 2014)

Kristen Wyatt, *Legal Marijuana Sales Bring Tax Boost, but It's Modest*, Tacoma News Tribune (Jan. 4, 2014)

APPENDIX

Testimony of Ohio Association of REALTORS® President Before the Ohio Legislature

OAR Daily Buzz, *OAR Testifies in Opposition to Ohio Sales Tax Expansion* (Ohio Ass'n of REALTORS® Mar. 7, 2013)

The following is the testimony given today by Bob Fletcher, OAR's chief executive officer, to the Ohio House Ways & Means Committee concerning House Bill 59. The leadership of the organization voted unanimously to oppose the expansion of the sales tax base to services, including those involved in a real estate transaction.

Mr. Chairman, members of the subcommittee, my name is Bob Fletcher and I am appearing today on behalf of the Ohio Association of REALTORS. My testimony will be directed to the tax revisions contained in the budget bill – H.B. 59.

In short, we agree with the stated intent and hoped for outcome of implementing these revisions – namely stimulating the economy and creating jobs. We're just not convinced that's going to happen. For us, the detrimental effect of extending the sales tax base to virtually all services except health care, education, and some household services such as rent and utilities, outweighs the positive effect of the income tax cuts. As a result, we oppose the component of H.B. 59 that expands the sales tax base to most services.

The Ohio Association of REALTORS is an individual membership trade association comprised of approximately 26,000 members in Ohio. That number represents well over 80% of all licensees in the state. Our members are engaged in every aspect of real estate services and activities, including residential, commercial, appraisal and property management. Thus, our membership is comprised of the small businesses that the Governor and the legislature seek to help as part of this legislation. The industry applauds Ohio lawmakers for solving the state's financial woes two years ago, when an $8 billion budget deficit was filled without any tax increases. The resulting economic turnaround that has transpired across the state; with rising employment, a strengthening real estate marketplace and rising consumer confidence among our fellow citizens cannot be discounted.

We have spent considerable time and Association resources to analyze the proposals – focusing, of course – on the real estate industry. We believe that these proposals will have negative effects on homebuyers, our members, the real estate industry, and the overall economy in Ohio. As part of this process, we reached out to our members and they are deeply concerned about the health of the housing industry and the entire real estate industry. They are concerned about the impact this legislation will have on the industry and the chilling effect the legislation may have on future home purchases and the overall Ohio economy.

The proposals in H.B. 59 provide for a 20% reduction in the individual income tax rates applicable to all Ohioans. The bill also provides a 50% reduction in taxable income (up to $750,000) as included in an individual's schedule C business income and such business income from pass-through entities. The proposals in H.B. 59 also provide for a reduction in the overall sales tax rate (approximately .63% in the state and average local piggy back taxes). We are supportive of the intent to reduce the tax on small businesses so that business can reinvest and help the overall Ohio economy become more competitive.

Our concern with H.B. 59 is that it also imposes a broad sales tax on services which will significantly exceed the benefit of the personal income and small business tax reductions. The real estate specific items proposed to be taxed as services in H.B. 59 include brokerage commissions and fees related to property inspections, appraisals, title searches, architectural services, credit reports, mortgage origination, and property management. In addition, as written, it appears that there could also be additional layers of tax on certain transactions such as the listing brokerage paying the purchasing brokerage its share or each brokerage paying its sales agents.

Let me briefly outline our concerns and our reasons for opposition to all of these sales tax proposals. As I mentioned earlier, taxing essentially every service incurred in purchasing real estate will add to the cost of purchasing and selling real estate. It will, without question, make housing less affordable for those who can least afford it, namely first-time homebuyers. According to a National Association of Realtors ("NAR") study from 2012, the first-time homebuyer segment represents 39% of total Ohio buyers. Today, first-time homebuyers are an important and growing segment of our real estate marketplace, jumping 7 percentage points (up from 32%) in 2012 from the prior year. First-time buyers are essential as they fuel the rest of the real estate market as people move up on the housing ladder. The proposed sales tax proposals would increase the overall cost of purchasing a home. Based on that same study, 80% of all Ohio homebuyers finance their home and the financing makes up 92% of the home's purchase price. Many of these homebuyers are already at their limit, particularly those in the important first-time homebuyer category.

Also, I should point out that Ohioans already pay a tax when they sell a home. They are required to pay a tax at the county level in the form of a conveyance fee. And we know that 87 of the 88 counties in our state charge more than the $1 per thousand minimum set by the state. Counties are permitted to charge as much as $4 per thousand, which many do. To illustrate the impact on a typical homebuyer, we have provided an estimate of the impact on a typical home purchase.

As we noted above, the vast majority of our membership consists of agents and brokers that are independent contractors that run their own businesses. Some of you may be surprised to learn that our typical member is a sales agent with a median income of $28,700. Because they are independent contractors, they are responsible for all their own business costs, as well as medical and retirement costs.

The individual income tax reductions would help these small businesses, but not sufficiently, to offset the other sales tax provisions. The sales tax portion of the proposals would impose a tax on commission income even though the agents already pay an individual income tax. It would also require small businesses to incur an additional level of complexity and cost by administering the sales tax. In a nutshell, such typical members would receive $480 of personal income and sales tax savings but then would be required to charge a sales tax on their total commissions of $1,957, or otherwise reduce their commissions. There is significant fear in the industry that agents would not be able to pass through such costs.

The real estate industry has played an integral role in the improvement within the Ohio economy since the onset of the economic challenges a few years ago, as increased home sales activity and rising average sales prices have helped to establish a solid foundation for the state's current and would-be property owners. The real estate industry accounted for 13.2% of the Gross State Product in 2010. Real estate transactions also have a derivative effect on other areas including mortgage lending, title, appraisal, and inspection services. The Bureau of Economic Analysis estimated that $38,498 in income is generated each time a home is sold in 2012. This includes the various real estate costs in purchasing a home. In addition, a home sale creates expenditures such as the purchase of furniture, appliances, painting and other cosmetic services, moving services, etc. Additionally, Ohio's commercial real estate practitioners have helped Ohio businesses – from small to large – locate, grow and flourish in the Buckeye State.

REALTORS know firsthand the challenges wrought by the recent economic downturn. Since the market's peak in 2005, OAR's membership base has declined by more than 9,000, activity in the state's housing market has dropped by nearly 23 percent and the average price of homes sold has declined by nearly 14 percent. Our recent gains in homes sold over the past two years and the slight uptick in pricing last year – while impressive – could be derailed by the imposition of a sales tax on every aspect of a housing purchase, including home inspections, appraisers, mortgages, radon inspections, title services, commissions and more. The expansion of the sales tax to every service associated with a real estate transaction threatens a fragile, but critical sector of the economy and will deal an unnecessary financial burden to Ohio's property owners.

Further, a sales tax on commercial rent leases poses a threat to future economic development by unnecessarily adding to the cost of business operations in Ohio. The REALTOR profession is committed to selling Ohio as an ideal locale to live, work and call home. Our focus is on making our local communities attractive to both first-time and seasoned buyers, in bolstering the local economies by helping entrepreneurs open for business or expand their operations, in establishing great schools and civic opportunities, spurring job creation and building a solid foundation for a strong, vibrant and growing marketplace in the Buckeye State going forward.

As mentioned above, we have spent considerable time analyzing these proposals and talking to our membership. We were hopeful – of course, that the tax changes would be beneficial or at least neutral to our industry. However, our analysis has found that these changes are not good at all and will create a serious “headwind” to a real estate industry which is finally, after 5-6 years of decline, showing signs of resurgence.

Mr. Chairman and members of the committee, for all the reasons I have cited, I urge you to reject the proposals to add new sales taxes on all services and, in particular the real estate industry. I thank you for this opportunity to share my views and I would be happy to respond to any questions you may have.