CENTER FOR TAXPAYER RIGHTS

Working Paper: Effective Tax Administration Brief: A Review of Taxpayer Rights and Protections in State Tax Administration (06.14.23)[1]

I. Executive Summary

With funding from the Rockefeller Foundation, the Center for Taxpayer Rights developed a survey of state tax administration to collect information on state tax practices, to identify the practices that could be improved, and to highlight those practices that support taxpayers and their rights. With the results of the survey, the Center hosted an online workshop series, *Reimagining Tax Administration: State Tax Practices and Taxpayer Rights*, where experts discussed their experiences with their state's tax administration. Although the Center is still receiving survey results, this report is the culmination of the lessons from the preliminary survey results and the *Reimagining* series.

The Center was motivated to begin this project for three main reasons. First, state reliance on tax revenue due to balanced budget requirements means that taxpayer rights might be prioritized after the collection of revenue. Second, taxpayers in most states do not have access to representation and education that might be available through low-income taxpayer clinics at the federal level. Finally, state tax agencies generally lack the significant oversight that the IRS has in the form of Congressional and Executive branch management, advisory bodies, and watchdog groups. Combined, these factors have the potential to negatively affect taxpayers who must navigate the complex procedures in place between the various tax systems at the state and local level.

Between income tax, sales tax, and property tax, the Center has identified several noteworthy features of state tax administration and examples of state practices in these areas. This report describes these areas and calls attention to the trends that are concerning from a taxpayer rights

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perspective and applauds the practices that are protecting taxpayers and their rights at the state and local level.

II. Introduction

In the United States, the power to tax is shared between the federal government, the states, and lower-level localities, including counties, municipalities, and school districts.[2] Among these jurisdictions, there is no uniformity in the administration of tax. It is therefore the responsibility of the taxpayer to understand and navigate each tax system. This is a task that can be overwhelming if not impossible to even the most sophisticated taxpayers.

While the Internal Revenue Service and federal tax administration are often the subject of political debate and tracked by media and advocacy groups, state and local level taxation is left in the shadows. States' taxing powers, however, are equally deserving of attention. State governments collect over one trillion dollars in taxes each year,[3] and their enforcement measures can reach taxpayers financially, professionally, and personally. Often, harmful state practices are not the result of an intentional act by the state; rather, a lack of agency resources and legislative attention prevent the implementation of practices that might protect or expand taxpayer rights. Balanced budget requirements necessitate increased assessment and collection activity to provide services and programs for state residents.[4] A lack of funding for state-level advocacy and representation and minimal governmental oversight[5] create the potential for unchecked state action and violations of taxpayer rights. The Center for Taxpayer Rights, with funding from the Rockefeller Foundation, has identified state tax practices that protect and expand taxpayer rights and those that jeopardize and infringe on taxpayer rights. Together, these practices inspire the recommendations set forth in this report.

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[2] For more information on the nexus between federalism and taxation, see Robert P. Inman & Daniel L. Rubinfeld, *Why Federalism Matters: Implications for Tax Policy*, 2009 Sho Sato Conference on Tax Law, Social Policy, and the Economy, University of California Berkeley, available at https://www.law.berkeley.edu/files/sho_sato_tax_conf_web_paper--inman-rubinfeld%281%29.pdf (last visited May 6, 2023).

[3] U.S. Census Bureau, *State Government Tax Collections Summary Report: 2020* (G20-STC) (Apr. 15, 2021), available at https://www.census.gov/content/dam/Census/library/publications/2020/econ/g20-stc.pdf. The figures in this report do not include tax revenue from the District of Columbia or Puerto Rico. In addition to income, property, and sales and gross receipts taxes, this figure includes other statewide taxes. For comparison, the federal government collected $4.9 trillion in 2022. U.S. Treasury Dep't. Fiscal Data, *How much revenue has the U.S. government collected this year?,* https://fiscaldata.treasury.gov/americas-finance-guide/government-revenue/#:~:text=Federal%20Revenue%20Overview,4.90%20trillion%20collected%20in%20revenue (last visited May 9, 2023).

[4] Nearly every state, including the District of Columbia, has some form of balanced budget requirement. Tax Policy Center, *What are state balanced budget requirements and how do they work?* (May 2020), https://www.taxpolicycenter.org/briefing-book/what-are-state-balanced-budget-requirements-and-how-do-they-work.

[5] For comparison, the IRS and federal tax assessment and collection activities are monitored not only by Congress, but also by several interagency and external groups. *See* Internal Revenue Service, *IRS Oversight Organizations* (Sept. 29, 2022), https://www.irs.gov/about-irs/irs-oversight-organizations#:~:text=The%20IRS%20Oversight%20Board%20is,work%20regularly%20with%20the%20IRS.

Divided into four tax types, this report incorporates data and examples from a survey of state tax administration and a series of online workshops with expert panelists, both described below. It also provides recommendations and model legislation for consideration by state and local tax agencies and advocates for taxpayers. This report is an attempt to make sense of complicated systems, to offer suggestions for improvement, and to encourage collaboration among the various agencies with the goal of protecting and expanding taxpayer rights.

a. The Survey

The first step in examining the relationship between state tax administration and taxpayer rights is identifying the procedures employed by the states. To do so, the Center for Taxpayer Rights developed a survey[6] of over 200 questions designed to collect this information from 52 jurisdictions.[7] The survey is ongoing – the time for completion of the survey is greatly dependent on the complexity of the relevant tax system and on the depth of the response to the survey questions. Additionally, locating volunteers in certain jurisdictions proved to be challenging. This was especially the case where the state does not have an income tax; there tend to be fewer state tax practitioners in these states. Due to the changing nature of tax systems, the Center plans to ask for yearly updates from volunteers to report changes since they last submitted the survey response.[8]

The survey is divided into four categories – income tax, sales tax (or equivalent), property tax, and other statewide taxes. Within each category, the questions are further split into groups roughly based on the National Taxpayer Advocate's [Taxpayer Roadmap]. These groups include tax return filing and processing, examination, appeals, litigation, assessment, collections, and taxpayer rights generally. The questions in the survey are not substantive; rather, they request information on the administration and procedures that a taxpayer may encounter through various interactions with the tax system. For uniformity and to facilitate quick analysis, most questions are structured to require a "Yes/No" response. However, every question includes space for an explanation. This allows volunteers to provide context for their "Yes" or "No" response, including whether the practice looks different in practice than it does on paper. In many cases, an affirmative response to a question will populate sub-questions. For example, if a volunteer indicates that their state has walk-in locations where taxpayers can receive in-person help, multiple follow-up questions appear asking for details regarding the hours of these locations, the availability of interpreters, and the services provided. Finally, volunteers are asked to provide a citation wherever possible. This not only ensures that the information provided in the survey is correct and traceable, but it also shows the type of authority or guidance governing the practice.

[6] A blank copy of the survey is attached to this report.
[7] Responses were requested from the 50 states, the District of Columbia, and Puerto Rico. Throughout this report, these 52 jurisdictions will be referred to as "states," regardless of their entity status.
[8] Indeed, since the survey was developed, there have already been changes in state tax administration. For example, Arkansas implemented a complete overhaul of its appeals function (Ark. Code Ann. § 26-18-1101), and Maryland passed legislation allowing for permanent state funding of low-income taxpayer clinics (Md. Code, Tax-Gen. § 1-207) and the establishment of a Taxpayer Advocate office (Md. Code, Tax-Gen. § 2-102-2).

The volunteers who completed the survey have various backgrounds and came from multiple sources. Some are Low Income Taxpayer Clinic (LITC) practitioners who are part of the Center for Taxpayer Rights' Litigation Strategy network. Through the American Bar Association Tax Section's State and Local Tax Committee, volunteers were recruited from private practice across the country. Finally, some state taxing agencies participated in completing the survey.[9] Volunteers were encouraged to collaborate with other state-level practitioners to expedite survey completion and ensure thorough responses. This project would not have been possible without the generous assistance and dedication of our volunteers, and the Center is immensely grateful for their participation.

The survey highlights the high number of tax systems in place in the United States. Forty-three of the 52 jurisdictions impose an income tax on individuals.[10] Forty-seven jurisdictions impose a sales tax or equivalent.[11,12] Every jurisdiction imposes a property tax. This means that there are at least 142 tax systems in the United States – each with different procedures, different authorities, and different implications for taxpayer rights.

a. *Reimagining State Tax Administration* Workshop Series

In October and November 2022, the Center for Taxpayer Rights hosted a series of online workshops that featured notable practices identified through survey results and made recommendations for improvement based on the experiences of practitioners and state tax administrators.[13] The series, entitled *Reimagining Tax Administration: State Tax Practices & Taxpayer Rights*, consisted of six panels over four workshops. Just as the survey does, the workshops generally followed the Taxpayer Roadmap.

> *Workshop 1: State Tax Return Filing Issues*. The first workshop introduced the series and covered regulation of tax return preparers, information return issues, refundable credits, and online tax filing and accounts.
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> *Workshop 2: Audits, Administrative Appeals, and Adjudication*. In this workshop, panelists discussed income tax and sales (gross receipts) tax audits, and the issues that can arise when state agencies disagree about the application of the law. The panelists also discussed state tax tribunals.
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> *Workshop 3, Panel 1: Enforced Collection of Tax*. The first panel of the third workshop discussed the various ways that states may enforce the collection of tax,

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[9] Surveys from the District of Columbia, Florida, New Jersey, Oregon, and Virginia all had some degree of involvement from the state tax agency.

[10] Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming do not have an income tax. New Hampshire only imposes an income tax on dividend and interest income. Because this tax does not reach the average taxpayer, it was excluded from the survey.

[11] Alaska, Montana, New Hampshire, and Oregon do not have a sales tax (or equivalent). Delaware imposes a gross receipts tax on businesses only. Due to the limited scope of this tax, it was not included in the survey.

[12] Alaska and New Hampshire are the only two jurisdictions that impose neither an income tax nor a sales tax.

[13] The agenda, materials, and recordings from the *Reimagining Tax Administration: State Tax Practices & Taxpayer Rights* series are available at https://taxpayer-rights.org/reimagining-state-tp-rights-materials/.

including liens, levies, public disclosure, and the suspension of professional and recreational licenses.

Workshop 3, Panel 2: Collection Alternatives. The second panel of the collections workshop built on the first with a discussion of collection alternatives available at the state level, with an emphasis on compromising debt and relief from joint and several liability.

Workshop 4, Panel 1: LITC Representation in State Tax Matters. Workshop 4 focused on taxpayer access to representation via low-income taxpayer clinics and state taxpayer advocates. Panelists discussed various ways that state funding of LITCs can arise and what that funding means for existing LITCs that primarily handle federal tax matters.

Workshop 4, Panel 2: State Taxpayer Advocates and Taxpayer Bill of Rights. The second panel of Workshop 4 considered the importance of state taxpayer advocates. The three taxpayer advocates on this panel shared their experiences in their offices and their roles and responsibilities to taxpayers and to their state.

The workshops featured only a handful of examples of remarkable practices identified in the survey results; however, in-depth discussions these practices generated during the workshops demonstrated the importance of sharing state tax administrative practices with practitioners, administrators, and the public.

III. Income Tax

State income tax is the dominant section of the survey, both because this tax affects the largest group of taxpayers and because the implications for taxpayer rights in this area can be so significant. The data reported in this section is extensive and developing, so analysis will be a continuous process. However, some systemic trends emerged that are worth noting. Although the examples below do not paint a complete picture of the findings from the survey and workshop data, they demonstrate the wide-ranging types of interactions with state income tax agencies that may interfere or strengthen their rights. Recommendations follow these examples.

a. Return Preparer Regulation

More than half of the population employs a paid tax preparer to complete and file their returns each year.[14] Federally, paid tax preparers are required to obtain a Preparer Tax Identification Number (PTIN) from the IRS.[15] Paid preparers are required to include their PTIN and other identifying information on all returns for which they are paid to prepare. The PTIN system

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[14] According to the IRS, more than 57% of all individual tax returns were filed electronically by a paid preparer in 2020. While there are some taxpayers who are required to file a state return but not a federal return and vice versa, this figure indicates that a significant portion of the population will pay for a tax professional to complete their returns – state and federal – each year. *See* Internal Revenue Service, *2022 Data Book*, Table 4, available at https://www.irs.gov/pub/irs-pdf/p55b.pdf (last visited May 15, 2023).
[15] Internal Revenue Service, *PTIN Requirements for Tax Return Preparers* (Jan. 6, 2023), https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers.

creates accountability for preparers, and it provides the IRS with traceable information if a return requires investigation. At the state level, however, there is no uniform system of regulation for paid return preparers. Most states do not have any requirements for who can receive payment for completing a state tax return.[16] In some states, the only requirement for paid return preparers is that the preparer obtain a PTIN and report it on state returns for which the preparer is paid to prepare.[17] A few states have recently implemented requirements for paid tax return preparers within the state, including licensing, education, and examination requirements.[18] With the IRS' limited ability to regulate paid tax return preparers,[19] the decision to implement regulations on paid return preparers – for both state and federal returns – seems to have fallen on the states.

a. Online Accounts

As society moves from paper and phones to online communication, Americans increasingly prefer to use the internet in their interactions with the government.[20] Despite this preference, the level of engagement with digital government offerings is relatively low, as the quality of government websites and apps is low.[21] Like the IRS, state tax agency digital services lag both the private-sector norm and the preference of the population.[22] However, there are some state tax agency online programs that are user-friendly and effective. In these states, taxpayers can not only file their tax return and receive helpful information, but they can also access transcripts, past tax returns, and other taxpayer-specific documents.[23] With this information readily available to taxpayers, states have broken down some of the administrative burden that comes with interacting with the tax system.

b. Free Electronic Filing

Over 90% of all federal individual tax returns were filed electronically in 2022. Of these, 3.3 million federal returns were filed using the IRS' Free File program, which allows eligible

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[16] Elaine S. Povich, *Most States Have No Rules for Independent Tax Preparers (*Feb. 25, 2014), Stateline, https://stateline.org/2014/02/25/most-states-have-no-rules-for-independent-tax-preparers/.
[17] Delaware, Illinois, and Iowa are examples of such states.
[18] California, Maryland, New York, and Oregon have the most significant paid return preparer regulations. All four require an application and education requirements (either qualifying or continuing). Maryland and Oregon require that applicants pass an exam. New York and Oregon have different requirements for those in the business of preparing returns and those who only prepare a few returns per year.
[19] In 2014, the DC Court of Appeals upheld a ruling that the IRS lacks congressional authority to license tax return preparers. *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014).
[20] Darrell M. West, *Brookings survey finds 51 percent prefer digital access to government services over phone calls or personal visits to agency offices* at question 4 (Feb. 13, 2019), Brookings Institution, https://www.brookings.edu/blog/techtank/2019/02/13/brookings-survey-finds-51-percent-prefer-digital-access-to-government-services-over-phone-calls-or-personal-visits-to-agency-offices/.
[21] *Id*. at survey question 6.
[22] *See* Center for Taxpayer Rights, *Tax Chats! On Transforming Tax Administration: Toward an Effective, Trusted, & Inclusive IRS* at *Workshop 3: Information Technology Challenges* (Apr. 18, 2023), https://taxpayer-rights.org/transforming-tax-admin/.
[23] The District of Columbia and California have robust online account systems for taxpayers. See MyTaxDC (https://mytax.dc.gov/_/) and MyFTB Features (https://www.ftb.ca.gov/myftb/features.html).

taxpayers to file their federal returns electronically at no charge.[24] Many states offer a similar service that allows eligible taxpayers to file their state returns electronically, either in partnership with the Free File program or through their own, independent programs.[25] Some states with their own electronic filing programs (non-Free File) allow any resident to file a tax return through the program. Some limit eligibility based on the complexity of the return, and some limit eligibility based on income. Additionally, some programs are available in languages other than English, and some are accessible on mobile phones.

c. Audit Processes

Of all the sections in the survey, the group of questions on audits and examinations proved to be the most nebulous. There is little information available to the public regarding the audit process and taxpayer rights during an examination. Nevertheless, some general trends on state income tax audits emerged that are worth noting here. First, like the IRS, many states rely on a variation of correspondence audit for a majority of their examinations.[26] Unlike the IRS, however, most states assign one agency employee to handle an examination from start to finish.[27] This is laudable – taxpayers have a single point of contact at the agency who is familiar with the facts and status of their case. One concerning trend is state reliance on federal tax examination results. In some states, when the IRS makes an adjustment to a taxpayer's federal income tax return, the state will automatically make the same adjustment to the taxpayer's state income tax return without conducting an independent review.[28] This system has the potential to harm taxpayers because IRS examinations are generally performed with minimal participation from the taxpayer. Additionally, because these adjustments are automatic, the taxpayer has little, if any, opportunity to contest the adjustment before the assessment (plus interest and penalties) is made.

d. Independent Appeals Offices

For many taxpayers, their interaction with the state tax agency ends with the filing of their tax return. Some taxpayers, however, continue to interact with the state tax agency well after the filing of the return. After an audit decision is rendered by the tax agency, a taxpayer may have the option to administratively appeal the decision. Although most taxpayers have the right to appeal a decision of the agency, most state appeals offices are seated within the tax agency – they

[24] Data Book 2022 at 2; Internal Revenue Service, *IRS Free File: Do your Taxes for free* (May 9, 2023), https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free. Most popular commercial software providers charge a fee for each state return prepared.
[25] The states that participate in the IRS' Free File program are: Arkansas, Arizona, Georgia, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia. Taxpayers using the Free File program to file their state returns must meet the eligibility guidelines set by the program. Examples of states that allow all taxpayers to file regardless of income are Alabama, Colorado, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, Utah, and Wisconsin. California and Delaware offer programs for electronic filing directly with the state, but there are income limitations.
[26] In many states, these are called "desk audits," but they seem to operate in a similar way.
[27] Of the states for which completed surveys have been received, Alabama, California, Delaware, Illinois, Missouri, New Jersey, New Mexico, Oregon, and Utah assign one employee to handle the entire audit.
[28] Colorado and Louisiana are two states that make automatic adjustments based on IRS examination results through information sharing agreements.

are not independent. It is possible that the independence of appeals will be reconsidered in the future. Since the distribution of the survey to the states, at least one state has reconsidered the position of appeals within its tax agency.[29]

e. Tax Courts

Where administrative remedies are insufficient, taxpayers may wish to seek judicial review of their tax issue. Taxpayers in most states have access to a state tax tribunal, whether as a division of the executive branch (in the same branch as the tax agency) or the judicial branch (independent of the tax agency).[30] There seems to be no correlation between states with income tax and states with a tax tribunal, meaning that tax tribunals are authorized to hear disputes regarding multiple types of tax, as authorized by the state. As is the case with any other type of court, state tax tribunals set rules for who is authorized to practice before the court and are authorized to hear only certain types of cases.

f. Public Disclosure

Perhaps the most tangible stop on the taxpayer roadmap is the collections stop. Here, taxpayers feel the real touch of the tax agency on their lives. Governments have many ways to enforce collection of income tax; often, state governments are authorized to do more than what the federal government is authorized to do. One example of a collection method that occurs in states but not in the federal government is public disclosure of delinquent taxpayers, also known as "naming and shaming."[31] Nearly half of the states have some sort of public disclosure policy, with some disclosing more tax return information than others and some limiting the disclosure to delinquent business taxpayers only.[32] In these states, the name of the taxpayer, as well as the taxpayer's address and the amount of tax owed, will be included in the disclosure.[33] Although some states have threshold delinquent amounts below which the taxpayer will not be included on

[29] Arkansas restructured its Tax Appeals Commission at the end of 2022, which included creating a new set of rules that govern the commission.
[30] Thirty-five states have a state tax tribunal. Alaska, Alabama, Delaware, District of Colombia, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Washington, West Virginia, Wisconsin, and Wyoming have a tax tribunal in their administrative branch. Arizona, Connecticut, Hawaii, Indiana, New Jersey, and Oregon have judicial branch tax tribunals. For more information, see AICPA State and Local Tax Technical Resource Panel, *Chart of States with and without State Tax Tribunals*, https://us.aicpa.org/content/dam/aicpa/advocacy/state/downloadabledocuments/chart-of-states-with-and-without-state-tax-tribunals.pdf (last visited May 16, 2023).
[31] Taxpayer information is made public via the federal tax lien to establish the IRS' priority over other creditors. Additionally, accepted offers in compromise are required to be made public. However, the federal government does not employ public naming of delinquent taxpayers for the purpose of "shaming" or punishment.
[32] These states are: California, Colorado, Connecticut, Delaware, Florida (businesses), Indiana (businesses), Kansas, Massachusetts, Minnesota (businesses), Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Vermont, Wisconsin, and Wyoming. Note that in many states, delinquent income tax is included in lists with delinquent property tax. For more information, see Andrew Wilford, National Taxpayers Union Foundation, *At Least 19 States Still Publish Draconian "Shame Lists" for Delinquent Taxpayers* (Jul. 21, 2020), https://www.ntu.org/foundation/detail/at-least-18-states-still-publish-draconian-shame-lists-for-delinquent-taxpayers.
[33] *Id*.

a public list, others do not – one dollar of outstanding tax is enough to make the list.[34] Usually, the only way for a taxpayer to be removed from the list is to pay the full amount of the outstanding tax (plus interest and penalties). In a minority of states, the taxpayer can contact the tax agency to negotiate a collection alternative to be removed from the list.

g. Suspension of Licenses

Similarly, the suspension of driver's, recreational, and professional licenses is a common method of encouraging tax collection at the state level. Especially for the suspension of driver's licenses, this authority is often connected to the state's ability to suspend licenses for other outstanding debts, like court fees and unpaid child support.[35] Therefore, the laws surrounding the suspensions are usually not part of the state's revenue code. Additionally, authority to suspend or revoke licenses is generally given to the agency that issues the license. For example, if a license to practice law can be revoked, this would be done by the state bar, not by the state tax agency.[36] As is the case with public disclosure, usually the only way for a taxpayer to have their license reinstated is through full payment of the debt. This can be a time-consuming process because the taxpayer must interact not only with the state tax agency, but also with the agency responsible for issuing and suspending the license.

h. Private Debt Collectors

When the state tax agency is unable to collect debt from a taxpayer – whether because the agency has been unable to reach the taxpayer or because the agency does not have sufficient resources to pursue further enforced collection action – the state may send the taxpayer's delinquent accounts to private debt collection agencies (PCAs).[37] The use of PCAs is problematic for several reasons. First, taxpayers often do not have the same rights with a PCA that they would have with the state agency. This includes the right to apply for collection alternatives based on economic hardship. Additionally, PCAs are not able to investigate and adjust the debt owed if it was improperly assessed or if it is not actually owed by the taxpayer. This means that there may be some debts sent to PCAs where the taxpayer does not actually owe the debt and nothing can be done about it. Finally, from the state's perspective, PCAs have been shown to be

[34] For example, in California, taxpayers must owe more than $100,000 and be in the top 500 tax delinquents to be included on the list. In Kansas, this list includes taxpayers who owe as low as $2,000.
[35] Of the states for which completed surveys have been received, California and Nebraska are the only states that authorize the suspension of driver's license if the holder has unpaid tax debt. For a full breakdown of states' license suspension policies, see Free to Drive, *Millions of people across the U.S. have lost their driver's licenses because they can't afford to pay fines and fees*, https://www.freetodrive.org/maps/#page-content (last visited May 16, 2023). Note that this source includes the current suspension policy status for all debt, though some states have made exceptions for tax debt.
[36] Of the states for which completed surveys have been received, Delaware, Illinois, Nebraska, New Jersey, Oregon, and Wisconsin authorize the suspension of recreational and professional licenses.
[37] Of the states for which completed surveys have been received, Colorado, Delaware, Illinois, Nebraska, New Jersey, New Mexico, Oregon, and Utah allow for the use of PCAs by the state tax agency.

ineffective revenue collectors for the government, thus minimizing their benefit to the public fisc while increasing harm to taxpayer rights.[38]

i. Collection Alternatives

As mentioned above, most states have balanced budget requirements, which require that the state spend no more than it receives in revenue. Needing to protect the revenue raised through income taxes, states offer fewer collection alternatives and fewer guidelines for those collection alternatives than the federal government does.

As a starting point, states have varying standards for the determination of eligibility for income-based collection alternatives and varying degrees of discretion when it comes to applying those standards to application for collection alternatives.[39] Although some states have vague standards that are difficult for taxpayer and practitioners to understand, some states have implemented clearly defined standards that help taxpayers determine whether or not they ar eligible for a particular collection alternative. [40]

Most states offer an installment agreement or payment plan.[41] State collection alternatives that provide more comprehensive relief to the taxpayer often are more difficult to obtain and are available to fewer taxpayers. Specifically, state offers in compromise are rare.[42] In states that do have offers in compromise, the standards for approval are vague.[43] For taxpayers unable to pay their tax debt at the time of filing, the lack of collection alternatives increases the risk that the taxpayer will be subject to one of the many enforced collection methods, two of which are discussed above. This can be expensive for both the state and the taxpayer.

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[38] *See* National Taxpayer Advocate, *2018 Annual Report to Congress, Most Serious Problem #19*, available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MSP_19_PDC.pdf (accessed on June 13, 2023).

[39] For example, Minnesota's criteria for accepting an offer in compromise historically included a consideration of whether the acceptance of the offer was "in the best interest of the state." In another example, Oregon does not give taxpayers a housing expense when that taxpayer is homeless.

[40] For example, in response to advocacy from the University of Minnesota Federal Tax Clinic, the Minnesota Department of Revenue changed its offer in compromise criteria to include more objective standards. Similarly, Indiana recently modified its allowable expenses to mirror those of the IRS.

[41] Many states' plans mirror the federal government's plan, though the details differ. For example, Pennsylvania offers both a "standard" and an "extended" plan. Under the standard plan, taxpayers with debt of less than $50,000 and who can pay the entire debt in 12 months or less can apply for the plan online, via phone, or via email. Taxpayers requesting a plan covering a longer period must contact the Department of Revenue to provide proof that they cannot afford to pay the debt in one year. See Pennsylvania Department of Revenue, *Payment Plans*, https://www.revenue.pa.gov/OnlineServices/MakeAPayment/PIT/Pages/Payment-Plans.aspx (last visited May 16, 2023).

[42] State tax agencies may be prohibited by statute from even offering a compromise program. For example, New Mexico's constitution contains an "anti-donation" clause, which prevents the government from writing off debt at the end of the statutory collection period or from settling the debt as part of an offer in compromise. N.M. Const. Art. IX, § 14.

[43] Of the states for which completed surveys have been received, California, Illinois, Kansas, Missouri, Nebraska, Oregon, and Wisconsin are the only states that have a compromise procedure. Of these, California and Nebraska are the only states that offer compromises on equitable grounds. As an illustration of these vague standards, before reform to its offer in compromise program, Minnesota would only accept an offer if it was in the "best interests" of the state.

Another option that taxpayers might have as a collection alternative is relief from joint and several liability, also known as innocent spouse relief. Generally, this option prevents one spouse from being held responsible for the part of a tax liability that arose from income or non-payment of tax attributable only to the other spouse. Many states offer some type of relief, but the application process and eligibility rules vary.[44] In at least one state, a request for relief from joint and several liability can be made via the annual tax return, in addition to being available as a standalone process.[45]

j. Collection Statutes of Limitation

Generally, the IRS has 10 years from the date of assessment of tax to collect the tax, absent any factors that might extend the collection period.[46] After this date, the IRS writes off the debt, and it can no longer take any collection action against the taxpayer for that debt. The states have taken various approaches to their collection statutes of limitations, if they have one.[47] In states that do have a collection statute of limitations, the time for collection varies from three years to 20 years, not accounting for any factor that may extend this period.[48] Without a reasonable statute of limitations, taxpayers may never be able to eliminate their tax debt, as penalties and interest will continue to accrue for years, and sometimes endlessly.

k. LITC Funding

At the federal level, IRS-funded Low-Income Taxpayer Clinics (LITCs) assist taxpayers with income less than 250% of the federal poverty line with tax controversies. Because LITCs are funded by the federal government, LITC practitioners are generally not permitted to represent taxpayers in state tax matters, unless that matter is related to their federal tax issue.[49] Despite having many of the same issues at the state level, low-income taxpayers are usually unable to get free assistance because only a handful of states fund LITCs to help with state-only issues.[50] Without state funding, low-income taxpayers are left without legal representation in their dispute with the state tax agency.

l. State Taxpayer Advocates

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[44] Of the states for which completed surveys have been received, Alabama, California, Colorado, Illinois, Nebraska, New Mexico, Oregon, and Wisconsin offer a variation of innocent spouse relief. Of these states, innocent spouse determinations in Colorado, Nebraska, and Utah are dependent on an IRS determination.

[45] Taxpayers in Indiana can check a box on Line 5, Schedule 7, of the annual tax return. The Department will then consider the request. Taxpayers can also request relief on a form separate from their tax return. See Indiana Department of Revenue, Non- or Partially-Responsible Spouse/Injured Spouse Information, https://www.in.gov/dor/individual-income-taxes/non-or-partially-responsible-spouseinjured-spouse-information/ (last visited June 13, 2023).

[46] I.R.C. § 6502.

[47] Oregon does not have a collection statute of limitations. In other states, the state is permitted to continuously renew tax liens indefinitely, thus creating the effect of no statute of limitations.

[48] Nebraska and Utah are examples of states that have a three-year statute of limitations of collections, though the state may place a lien on the taxpayer's assets that gives the state longer to collect. California's collection statute is 20 years.

[49] Publication 3319, *Grant Application Package and Guidelines* (2024) at 6, available at https://www.irs.gov/pub/irs-pdf/p3319.pdf (last visited May 16, 2023).

[50] California, Illinois, Maryland, and Massachusetts fund LITCs.

In addition to LITCs, taxpayer advocates or ombuds can help resolve disputes when the ordinary administrative processes within the tax agency have not successfully resolved the issue. Unlike LITCs, taxpayer advocates generally help all taxpayers, regardless of income. Taxpayer advocates serve as an intermediary between the taxpayer and the tax agency – they may have access to the agency's taxpayer account databases and can help the taxpayer navigate confusing processes. They advocate for individual taxpayers, but also for systemic change. More states have state taxpayer advocates than fund LITCs.[51] Among the several states that do have taxpayer advocate's offices, the authorities of the advocates vary – some are able to reverse a decision of the tax agency, while others are only authorized to give advice to the taxpayer as to how to handle their tax issue.

m. Agency & Public Collaboration

One of the main motivations behind this survey is the concern that states do not have the same level of oversight that the IRS has. These groups, whether internal or external, can not only flag harmful practices, but they can also make suggestions for improvement where the tax agency might not appreciate the taxpayer rights implications of a particular policy.[52] Together with state taxpayer advocate's offices, discussions with and recommendations from community members and taxpayers serve an important role in bettering tax administration.

n. Recommendations

    i. Assuming the federal government remains unable to sufficiently regulate tax preparers, the states should impose registration, initial testing, and continuing education requirements for paid tax preparers to protect taxpayers from harm.
    ii. All states should offer a free electronic filing system for all residents, regardless of the income of the taxpayer. Additionally, states should expand the availability of various forms online so that taxpayers with more complicated tax returns are not excluded from online filing.
    iii. While considering security and confidentiality, states should create or expand accessible, user-friendly online taxpayer accounts where taxpayers can file their returns, make payments, access transcripts and other agency records, access copies of past tax returns and agency correspondence, and upload documentation in the case of an audit.
    iv. States should expand and clearly notify taxpayers of their rights during examination. These rights should include the right to record conversations

[51] Alabama, Arizona, California, Connecticut, District of Columbia, Hawaii, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Virginia, and West Virginia have taxpayer advocate's offices. Maryland does not currently have a taxpayer advocate, but the state recently passed legislation authorizing the creation of an office.

[52] Examples of successful advocacy efforts include the University of Minnesota Federal Tax Clinic's efforts to obtain information regarding the state's offer in compromise standards, which resulted in reform of those standards and the Indiana Legal Service's participation in the state's Advisory Council, which is an opportunity for practitioners to share recommendations with the state.

during the exam, the right to retain representation during exam, the right to an explanation of the agency's decisions, and the right to be informed of refunds or credits that the taxpayer is eligible for but that the taxpayer did not claim.

v. Rather than relying on desk or correspondence audits, state tax agencies should expand the methods by which taxpayers communicate with their auditor, including the creation of virtual office examinations as an option.
vi. States should prohibit the tax agency from making automatic adjustments to a taxpayer's account based on an adjustment made by the IRS.
vii. Notification of audit that is sent to the taxpayer should clearly explain the audit process, the taxpayer's rights during the exam, and include the name and contact information for one agency employee that will handle the exam.
viii. States should provide fair, independent appeals processes. The best practice is the creation of an independent administrative appeals office and the establishment of a state tax court that is part of the state's judicial, rather than executive, branch.
ix. State tax agencies should pause collection activity during the period when a taxpayer may request an appeal and during the appeal itself, absent extraordinary circumstances.
x. States should consider the harmful economic and social effects that taxpayers may face as the result of enforced collection in addition to the state's need to protect revenue. To do so, states should create objective standards for granting collection alternatives, including allowable expense guidelines for determining hardship and collection potential and factors for the determination of relief from joint and several liability. This guidance should be available to the public and agency employees should be trained on their application.
xi. States should fund low-income taxpayer clinics to provide representation and education to low-income taxpayers.
xii. States should create taxpayer advocate offices so that taxpayers have a voice within the state tax agency.
xiii. States should organize advisory councils or other groups that can keep the agency accountable and make recommendations for improvement.

IV. Sales Tax

Sales tax has proven to be the most difficult type of tax included in the survey for which to find information. However, sales tax deserves significant attention, as the burden of understanding this complex tax can be significant for taxpayers, especially smaller businesses. These taxpayers must determine which products are subject to the sales tax and which are exempt. In an era of internet transactions, these taxpayers must also navigate interstate sales in a post-*Wayfair* environment. At the same time, states with a general sales tax (or gross receipts tax) are heavily dependent on its revenue. Despite the difficulty in locating helpful information and the evolving nature of sales tax nationwide, the survey and workshop series uncovered some important sales tax principles that are worth exploring further.

a. Confusing Names

Often, the name of a tax reflects the item or value that is taxed – income tax is a tax on income, sales tax is a tax on sales. However, some state taxes are misleading in their terminology and their application. This is particularly true for gross receipts taxes and similar alternatively titled sales taxes.[53] Despite imposing a tax on sales, the titles of these taxes suggest that another item is the subject of tax, which is particularly confusing for small-business owners. For example, if a sales tax is called a gross receipts tax, it would be reasonable for both the consumer and the business owner to assume that the tax would be on *gross receipts*, even though the tax is really on *sales*. This distinction is particularly relevant in the gig economy where workers might not think that their provision of services falls under a gross receipts tax and therefore not "gross up" their charges, or where workers might not understand that their job is a business subject to the tax.

b. Application of Sales Tax

While 47 jurisdictions levy some type of sales tax, the applicability varies. In some states, the general sales tax (whatever its title) applies to both businesses and individuals. Additionally, the applicability of sales tax with respect to tangible and intangible goods varies among the states, though usually a sales tax applies only to tangible goods.[54] Finally, the United States Supreme Court's decision in *South Dakota v. Wayfair* continues to influence the way that states administer and collect sales tax.[55] In that case, the Supreme Court held that states may tax online purchases if the purchase was made from that state, even if the seller has no physical presence in the state at the time of the purchase. States have implemented the Wayfair decision differently based on their existing sales tax regime and on their policy preferences for the treatment of sellers and buyers.[56]

c. Audits and Guidance

Across all types of tax, information and formal guidance on audits is scarce. However, this seems to be particularly true in the sales tax realm.[57] Especially in the states where the sales tax has broad applicability and in the wake of *Wayfair*, the rules surrounding sales tax are confusing for

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[53] The prime example of this comes from New Mexico. There, the general sales tax is titled a gross receipts tax (GST). In addition to being bafflingly titled, the New Mexico GST applies to both tangible and intangible goods, which is unusual for a gross receipts tax. Similarly, Hawaii calls its sales tax a "general excise tax," and it applies to all business activities.
[54] Again, New Mexico's GST is an outlier. It applies to both tangible and intangible goods and services.
[55] *South Dakota v. Wayfair*, 585 U.S. __ (2018). In *Wayfair*, the Supreme Court held that states may charge sales tax on online purchases made within the state, even if the seller does not have a physical presence within the state.
[56] *See* Sales Tax Institute, *How Home Rule States Have Responded to Wayfair* (Nov. 16, 2021), https://www.salestaxinstitute.com/resources/how-home-rule-states-have-responded-to-wayfair.
[57] Again, New Mexico stands out here. Guidance on sales tax audits is readily available, and the state tax agency offers audits that are comparatively taxpayer-friendly to qualifying taxpayers. See New Mexico Taxation and Revenue, Request a Managed Audit, https://www.tax.newmexico.gov/tax-professionals/e-filing-mandates-overview/request-a-managed-audit/ (last visited May 12, 2023).

many taxpayers, particularly small-businesses and out-of-state taxpayers. Some states have implemented lower stakes audits that mirror voluntary disclosure programs, where taxpayers can work with the state tax agency to improve future compliance.

d. Recommendations

i. States should create sales tax systems that are easily understandable for all businesses by publishing plain-language guidance that identifies the rights and responsibilities of the taxpayer. In the sales tax context, states should create specific information for small business owners and gig workers.

ii. When revisiting existing policies in light of the *Wayfair* decision and the increase of online transactions, states should create guidance specifically for online businesses, taking care to include small businesses that may be unfamiliar with the implications of the *Wayfair* case.

iii. States should increase transparency surrounding sales tax audits by making guidance thorough and readily available to taxpayers under facing audit. This includes incorporating plain-language publications that explain the procedure for the different types of audits that the state may conduct. Taxpayers under a sales tax audit should have the same rights as taxpayers have in income tax audits. These rights should include the right to record conversations during the exam, the right to retain representation during exam, the right to an explanation of the agency's decisions, and the right to be informed of credits that the taxpayer is eligible for but that the taxpayer did not claim.

V. Property Tax

The final statewide tax that was specifically targeted in the survey was property tax. All states authorize a property tax on real and personal property.[58] Although state governments typically administer and collect taxes on personal property, it is smaller governmental entities – cities, counties, and school districts – that are empowered to collect tax on real property.[59] For many of these jurisdictions, the revenue from property tax is a major source of that jurisdiction's income. Consequently, the need to protect this revenue may conflict with the desire to protect taxpayer rights. Because there are so many different property tax systems throughout the United States, it

[58] While municipalities in Alaska are authorized to levy a property tax, most do not Only 25 municipalities in the entire state impose a property tax. See Alaska Department of Commerce, Division of Community and Regional Affairs, *Property Tax*, https://www.commerce.alaska.gov/web/dcra/LocalGovernmentResourceDesk/TaxationAssessment/PropertyTax.aspx (last visited May 11, 2023).

[59] The Urban Institute, with data from the U.S. Census Bureau, has broken down (real) property tax revenue by type of taxing jurisdiction. Urban Institute, *Property Taxes, Local Property Tax Revenue, by Level of Government, 2017,* https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-and-local-backgrounders/property-taxes#:~:text=Taxpayers%20in%20all%2050%20states,levy%20taxes%20on%20personal%20property (last visited May 11, 2023).

is difficult to capture the nuances of these systems through the survey.[60] For that reason, the discussion that follows highlights some notable practices and makes general recommendations for improvement to the administration and collection of property taxes regardless of the details of the tax itself.[61]

a. Valuation, Assessment[62] and Appeals

Generally, property tax assessments are made in two phases. First, the property is appraised, whether through a contract appraiser or through on-staff appraiser.[63] Second, the amount of tax is assessed against the homeowner. This means that there are two stages at which a decision made by the government may be incorrect. In every state for which the Center has received a completed survey, taxpayers may appeal the appraised value of their property. In some states, this means that the taxpayer may present evidence of the value of similar property in their area or hire an independent appraiser to conduct a second valuation. However, the same cannot be said for appeals of assessments of property tax. About one-third of the states do not allow taxpayers to appeal the amount of tax assessed.[64] Generally, when a taxpayer is entitled to appeal the amount of tax assessed, the taxpayer will challenge their denied eligibility for an exemption or abatement program.[65] Of course, the availability of exemptions and other programs varies between and within the states,[66] but there are observable trends in the states' and localities' appeals programs.

b. Payment

In many tax systems, the obligation to pay a tax is suspended while an appeal is pending.[67] This is not the trend in the property tax realm. Generally, property tax appeals (whether of the valuation of the assessment) must be made by a certain date as specified by the taxing body. This date is the same for all taxpayers. The tax appeals body will then process any appeals and set

[60] Although some volunteers completed the survey based on statewide property standards, other volunteers chose one jurisdiction to use as a model that generally – though not universally – reflects the state's property tax. For example, the volunteers from Illinois chose to complete the property tax section based on Cook County's property tax regime.

[61] Because real property taxes tend to have a more significant impact on taxpayer rights, the examples discussed in this section of the report focus solely on the real property tax administration.

[62] In this report, the word "assessment" is used to mean the formal recording of the tax, rather than the assignment of value to property.

[63] In most of the states for which the Center has received survey responses, appraisers are employed by the locality, though some do contract with independent appraisers. Even in states that directly hire appraisers, localities are permitted to hire third party appraisers.

[64] Of the states for which the Center has received survey results, Alaska, Hawaii, Illinois, Oregon, and Utah do not allow appeals of property tax assessments. Alabama, California, Colorado, Delaware, Nebraska, New Jersey, Pennsylvania, South Dakota, Texas, and Wisconsin allow for some type of appeal from a property tax assessment.

[65] For example, property owners in Philadelphia, Pennsylvania, can only appeal denial of abatements (construction), homestead exemptions, and non-profit exemptions. *See* Philadelphia Board of Revision of Taxes, *Appeal Form*, available at https://www.phila.gov/media/20210121134036/2021-BRT-Appeal-Form-Abatement_Homestead_NP-Denial-2.pdf (last visited May 12, 2023).

[66] Almost every state has a homestead exemption. In New Jersey, the homestead program is a tax rebate program rather than an exemption from assessment.

[67] For example, at the federal level, assessment after an examination does not occur until the time for appeal has passed. I.R.C. § 6213(a).

hearings. In some states, the taxpayer is not obligated to pay the tax until the appeals office has decided on the correct value of the assessment. In other states, however, the taxpayer will be required to pay the tax by the payment deadline, regardless of the status of their appeal.[68] For example, assume the deadline to file an appeal is March 1 and the payment deadline is April 1. If the appeals office has not rendered a decision on an appeal by April 1, the taxpayer must still pay the originally assessed tax by April 1, *even if* the taxpayer timely filed a petition for appeal by March 1. If the taxpayer's appeal is granted before the deadline, then they are only required to pay the agreed upon amount of tax, which may be nothing; if the taxpayer's appeal is decided after the deadline, the taxpayer must pay the entire assessed amount. The taxpayer can then request a refund of any overpayment.

c. Strict Foreclosure

The ultimate remedy for delinquent property taxes is foreclosure.[69] In most cases, the foreclosure process is identical for that of any other creditor. After appropriate notice is given, a public sale is conducted. The creditor collects the outstanding balance, and any remainder is returned to the property owner. A few states, particularly those in the Midwest, employed a process known as "strict foreclosure" when attempting to collect unpaid property taxes. In a strict foreclosure, the state has the power to seize both the value of the unpaid debt *and the equity* that remains. In practice, this means that the state could retain any amount in addition to the amount due once a sale occurs.[70] After several challenges to this practice as takings and excessive fines, the United States Supreme Court recently ruled that the practice of strict foreclosure is unconstitutional under the Takings Clause of the 5th Amendment.[71] Although this practice is no longer permitted, its widespread use until the Supreme Court's decision is worth highlighting.

d. Taxpayer Advocate

As discussed above in the Income Tax section of this report, states are increasingly creating taxpayer advocate and ombuds offices. Given the local nature of property taxes and the significant volume of income tax issues on the state-level, many of the state taxpayer advocates

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[68] The property tax assessment process of Los Angeles County, California, illustrates this concept. Property tax bills are mailed in October and no later than November 1. Taxpayers must pay by November 1. At the same time, taxpayers have 60 days after the mailing of the bill to file an appeal. This means that a taxpayer may timely file an appeal after the payment deadline. Even so, the County states, "Filing an appeal does not suspend the obligation to pay property taxes. If you choose to appeal your assessment, you must still pay your property tax bills in full by the delinquency dates. Otherwise, you may incur penalties while the case is in the appeals process." County of Los Angeles Treasurer and Tax Collector, Secured Property Taxes Frequently Asked Questions, https://ttc.lacounty.gov/secured-property-taxes-frequently-asked-questions/#:~:text=The%20Annual%20Secured%20Property%20Tax%20Bill%20has%22two%20payment%20stubs,becomes%20delinquent%20on%20April%2010 (last visited May 12, 2023).

[69] In every state for which the Center has received a completed survey, the government may foreclose in the event of delinquent property taxes. This includes both judicial and non-judicial foreclosures.

[70] For more information on the history and mechanics of strict foreclosures, *see* Anna Gooch, *Hall v. Meisner: An Overreach of State Collection Activity* (Nov. 21, 2022), Procedurally Taxing, https://procedurallytaxing.com/hall-v-meisner-an-overreach-of-state-tax-collection-activity/.

[71] *Tyler v. Hennepin County, Minnesota, et al.*, 598 U.S. ___ (2023) Note that Vermont and Connecticut permit private creditors to pursue strict foreclosures.

focus solely on income tax issues.[72] However, some state taxpayer advocates are permitted to assist taxpayers with property tax issues.[73] Discussed further in the Income Tax section, the duties and abilities of taxpayer advocates vary across the country.

e. Recommendations

i. Taxpayers should be able to appeal the property tax assessment in addition to the appraised value of their property, especially when the jurisdiction offers programs for exemption or abatement.

ii. If a taxpayer timely appeals a property tax assessment – whether the appraised value or the assessment itself – the taxpayer's obligation to pay the tax should be suspended (as should any penalties and interest) while the appeal is considered.

iii. In states with an existing taxpayer advocate or ombuds office, employees of that office should be empowered to assist taxpayers with property tax issues and to work directly with the taxing agency to resolve those issues. In states without a taxpayer advocate's office, one should be created with statutory authorization to assist with property tax issues, even if the state does not have a statewide income tax.

iv. Cities and counties should be authorized and funded to create taxpayer advocate offices to help taxpayers with their local tax issues, including property tax issues.

VI. Other Statewide Taxes[74]

Nearly 30 percent of the tax revenue collected by the states comes from taxes other than individual income tax, sales and gross receipts tax, and property tax.[75] Often, these taxes function like a sales tax; when a resident purchases a particular product, the tax on that product is automatically added to the price at the time of the purchase. Below is a discussion of the most common "other" statewide taxes. Because this section mentions a variety of different taxes, including those that involve significant public policy considerations, the Center is not making general recommendations for improvement. However, each of these taxes deserves further study.

a. Motor Fuel Tax

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[72] Of the states for which we have received complete survey responses, Alabama, New Jersey, and Utah do not permit their taxpayer advocates to assist taxpayers with property tax issues.

[73] Of the states for which we have received complete survey responses, California, Hawaii, and Oregon authorize their taxpayer advocates to assist taxpayers with property tax issues in addition to income and other tax issues. Note that Florida, which does not have an income tax, does have a taxpayer advocate who can assist taxpayers with property tax issues. Additionally, New York City's Taxpayer Advocate Office – once of the few city taxpayer advocate's offices – can assist taxpayers with property tax issues. *See* https://www.nyc.gov/site/finance/about/taxpayer-advocate.page.

[74] The survey included a tab that asked volunteers to provide information regarding any other statewide taxes in place in their state. No specific questions were asked given the variable nature of these taxes, even within similar categories. Therefore, the information in this section is taken from both the survey results and external sources.

[75] *See* U.S. Census Bureau, *State Government Tax Collections Summary Report: 2020* (G20-STC) (Apr. 15, 2021).

Every state imposes a tax on the sale of motor fuel, whether gasoline, diesel, or other.[76] In about half the states, the tax is calculated as a percentage of the quantity of fuel purchased.[77] In other states, the amount of the tax is variable based on fuel price and inflation.[78] The tax per gallon varies, with some states imposing a sales tax in addition to a tax on the fuel itself.[79] Several factors have recently affected the administration and collection of motor fuels taxes. First, the increasing popularity of electric vehicles means that the tax base for motor fuel taxes is decreasing.[80] Second, the COVID-19 pandemic's shutdowns and stay-at-home orders meant that consumers were driving less. States therefore collected less fuel tax revenue.[81] Finally, world events can affect the amount of fuel tax revenue collected.[82] These factors had motivated state legislatures to consider – and sometimes, enact – fuel tax "holidays," which temporarily postpone the collection of fuel tax or reduce the amount collected.[83]

b. Corporate Income Tax

Nearly every state imposes a corporate income tax.[84] The percentage of the tax varies. Additionally, some states impose a flat tax on profit while others employ a bracket system.[85] Of the states that do not have a corporate income tax, four of them impose a gross receipts tax instead.[86] Moreover, some states impose both a corporate income tax and a gross receipts tax.[87]

c. Motor Vehicle Tax

Like the motor fuel tax discussed above, statewide motor vehicle taxes operate similarly to a sales tax, but the rate is specific to the purchase (or use) of a vehicle. Most states impose a motor

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[76] Urban Institute, *Motor Fuel Taxes*, https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/motor-fuel-taxes#:~:text=In%20addition%20to%20Alaska%2C%20five,and%20Maryland%20(42.7%20cents) (accessed on May 11, 2023). Note that the federal government also collects 18.4 cents per gallon of fuel sold.
[77] *Id*.
[78] *Id*.
[79] *Id*. California, which has the highest tax per gallon, includes the calculation of the sales tax per gallon in its fuel tax calculation. *See* CBS8, *A breakdown in the taxes and fees in California gas prices* (Oct. 7, 2022), https://www.cbs8.com/article/traffic/gas-prices/gap-between-californias-gas-prices-and-the-us-has-never-been-larger/509-17522867-a344-4cbc-bc5d-ac617eb21268.
[80] Jim Motavalli, U.S. News & World Report, *States Losing Tax Gas Revenue with EV Adoption* (Jan. 18, 2023), https://cars.usnews.com/cars-trucks/features/states-losing-gas-tax-revenue-with-ev-adoption.
[81] Ulrik Boesen, Tax Foundation, Gas Tax Revenue to Decline as Traffic Drops 38 Percent (Mar. 31, 2020), https://taxfoundation.org/gas-tax-revenue-decline-as-traffic-drops/.
[82] Currently, the war in Ukraine is affecting fuel prices worldwide.
[83] Urban Institute, *Motor Fuel Taxes.*
[84] Washington, Texas, Nevada, Wyoming, South Dakota, and Ohio do not have a corporate income tax. South Dakota and Wyoming are the only two states that impose neither a corporate income tax nor a gross receipts tax on businesses. Janelle Fritts, Tax Foundation, *State Corporate Income Tax Rates and Brackets for 2023* (Jan. 24, 2023), https://taxfoundation.org/publications/state-corporate-income-tax-rates-and-brackets/.
[85] *Id*.
[86] These states are Nevada, Ohio, Texas, and Washington. *Id*.
[87] Delaware, Oregon, and Tennessee impose both a corporate income tax and a gross receipts tax. Some cities in Pennsylvania, Virginia, and West Virginia also impose both taxes. *Id*.

vehicle tax that is separate from a sales tax.[88] The rate of tax varies across the states, and ranges from 2% to over 8%.[89] Notably, for individuals choosing to itemize deductions on their federal tax return, they may be able to deduct the amount of the state motor vehicle tax from their income[90]

d. Tobacco/Cigarette Tax

Another statewide tax that generally operates like a sales tax is the cigarette or tobacco tax, which is imposed by every state. For cigarette taxes, the amount of tax is levied as a specific dollar amount per pack purchased, regardless of the price of the product itself.[91] In addition to state-level tax, both the federal government and many localities levy an additional tax on tobacco products.[92] Much of the legislation enacting tobacco and cigarette taxes was the result of the Master Settlement Agreement, which was a nationwide (state-level) response to lawsuits against major tobacco companies.[93] The applicability of tobacco and cigarette tax to vaping and similar products varies across the states, and states are increasingly considering expansions to their tobacco and cigarette taxes in response to the changing use of vaping products.[94]

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[88] These states are Alaska, Delaware, Montana, New Hampshire, and Oregon. World Population Review, *Car Sales Tax by State 2023*, https://worldpopulationreview.com/state-rankings/car-sales-tax-by-state (last visited May 11, 2023). Note that these are the same states that do not impose a general sales tax.

[89] *Id*. Alabama has the lowest rate and Nevada has the highest.

[90] Internal Revenue Service, *2022 Instructions for Schedule A*, available at https://www.irs.gov/pub/irs-pdf/i1040sca.pdf (accessed on May 11, 2023). If the taxpayer is eligible to do so and chooses to do so, the taxpayer would report the amount of motor vehicle tax paid to their state on line 5a, "State and local income taxes or general sales taxes." The instructions explain, "**Motor vehicles.** Sales taxes on motor vehicles are deductible as a general sales tax even if the tax rate was different than the general sales tax rate. However, if you paid sales tax on a motor vehicle at a rate higher than the general sales tax, you can deduct only the amount of the tax that you would have paid at the general sales tax rate on that vehicle. Include any state and local general sales taxes paid for a leased motor vehicle.

[91] *See* Ann Boonn, Campaign for Tobacco-Free Kids, Map of State Cigarette Tax Rates (Dec. 14, 2022), https://www.tobaccofreekids.org/assets/factsheets/0222.pdf.

[92] The federal tax on tobacco products is $1.01 per pack. Congressional Budget Office, *Increase Excise Taxes on Tobacco Products*, https://www.cbo.gov/budget-options/58706 (last visited May 11, 2023). Alabama, Alaska, Colorado, Illinois, Missouri, New York, Ohio, Pennsylvania, Tennessee, and Virginia permit localities to charge their own tobacco or cigarette tax. The highest local cigarette tax is over $4 per pack (Chicago, Illinois). Urban Institute, *Cigarette and Vaping Taxes*, https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/cigarette-and-vaping-taxes (last visited May 11, 2023).

[93] National Association of Attorneys General, *The Master Settlement Agreement*, https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/ (last visited May 11, 2023).

[94] Nineteen states do not tax vaping products. Of the states that do, about half tax per unit of product (liquid) and half tax as a percentage of price. Urban Institute, *Cigarette and Vaping Taxes*.

Appendix – Best Practices

During the Center for Taxpayer Rights' online workshop series, *Reimagining Tax Administration: State Tax Practices and Taxpayer Rights*, discussed above in II.b., panelists discussed tax administration in their states, both those that protect and expand taxpayer rights and those that curtail and jeopardize taxpayer rights. Below are summaries of the practices that support taxpayers and expand access to taxpayer rights collected from the *Reimagining* series. This list is by no means exhaustive; however, these practices should be referenced by state tax agencies and advocates alike when considering how to improve their own tax systems.

Income Tax

1. District of Columbia: Online Tax Accounts & Filing System

With mail and processing delays, paper returns and other documents take months for tax agencies to enter into their systems. Additionally, staffing issues make phone calls to tax agencies a long, if not impossible, process. Endeavoring to combat these issues, the DC Office of Tax and Revenue has expanded its online services to include free tax filing, documentation of monthly EITC payments, and access to the Taxpayer Advocate.[95] These tools will not only save resources for the department, but they will also encourage taxpayers to engage with the tax system in an easy and convenient way. Further, creating a mytax.dc.gov account is relatively user-friendly, minimizing barriers to access.

2. Oregon: Tax Return Preparer Regulation

After the decision in *Loving v. IRS*, the IRS is unable to regulate tax preparers without authorization from Congress. Therefore, this responsibility is left to the states. A few states have begun to regulate tax preparers beyond requiring them to obtain a PTIN from the IRS. One state with particularly strict requirements is Oregon.[96] There, preparers must meet certain eligibility requirements, meet education requirements, and pass an examination. Oregon also has different eligibility requirements based on whether an individual is in the business of preparing tax returns or an individual prepares only a few returns per year. Regulations like this ensure that taxpayers are protected when hiring a tax professional.

3. Arkansas: Tax Appeals Commission

In the completed surveys, the appeals function proved to be a rather mysterious area of state tax administration. In addition to lacking transparency, state appeals offices are generally located within the department, eliminating the possibility of a completely independent review of an agency decision. Arkansas has made steps to fix this problem. Beginning with agency decisions made after January 1, 2023, taxpayers are able to file an appeal directly with the Tax Appeals

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[95] MyTaxDC is available at https://mytax.dc.gov/_/.

[96] Details on Oregon's tax return preparer requirements can be found at: https://www.oregon.gov/obtp/pages/examrequirements.aspx.

Commission, a division of the state Attorney General's office.[97] The creation of this office ensures that taxpayers have access to a neutral moderator who can resolve disputes between the taxpayer and the tax agency.

4. New Jersey: Tax Court

While many states have tax tribunals, few states have tax tribunals that are independently situated within the state's judicial branch. New Jersey is one of those states.[98] The New Jersey Tax Court, in addition to being separate from the tax agency and the executive branch, takes significant steps to make the court accessible for all taxpayers, including providing interpreter services and technology for taxpayers who might not have access, especially during the COVID-19 pandemic.

5. Indiana & Minnesota: Collection Alternative Eligibility

One of the biggest complaints that emerged from the survey results is that states are not transparent in their decision-making processes. This includes the criteria on which they determine eligibility for collection alternatives. However, Indiana and Minnesota have begun efforts to fix this. They both have adopted more objective and predictable standards, which was the result of input from the community.

6. Indiana: Innocent Spouse Relief

Taxpayers in Indiana have flexibility when applying for innocent or injured spouse relief.[99] They can make the request via their tax return or via a free-standing form. Making the option to request relief through the tax return significantly reduces the burden that comes with completing a separate form. Of course, taxpayer requests made via the tax return are still subject to agency review, but removing the need for a second, separate interaction with the tax agency not only flags the issue from the start of the filing process but also reduces the barriers that might prevent an eligible taxpayer from applying for relief.

7. Maryland: LITC Funding

Recently, Maryland's funding of low-income taxpayer clinics became permanent.[100] This funding, which is divided equally between the three clinics in the state, is nearly equivalent to the IRS' funding amount. This funding allows advocates to assist taxpayers with state tax issues where they would not normally be able to under IRS program rules. The funding will be a great help to Maryland taxpayers facing state tax issues who are otherwise unable to retain representation.

[97] Information on the Commission is available at https://ig.arkansas.gov/tax-appeals-commission/. In 2022, the Commission requested comments on its proposed rules. The Center for Taxpayer Rights submitted comments in collaboration with the Legal Aid of Arkansas LITC.
[98] More information on the Tax Court of New Jersey is located here: https://www.njcourts.gov/courts/tax#263936.
[99] The webpage describing the application process is here: https://www.in.gov/dor/individual-income-taxes/non-or-partially-responsible-spouseinjured-spouse-information/.
[100] The statute regarding the permanent funding is available at https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0346?ys=2023RS.

8. Oregon: Taxpayer Advocate Office

Oregon's Office of the Taxpayer Advocate is particularly strong.[101] The Oregon Taxpayer Advocate can insist taxpayers with multiple different types of tax, and the office engages with community groups for spreading information about the office and state taxes and educates taxpayers in both English and Spanish.

9. Indiana: Tax Advisory Council

Indiana's Tax Advisory Council was established in 2017 to improve tax administration by connecting the Department of Revenue with community members, including private practitioners, academics, and low-income tax clinic practitioners.[102] Members of the Council can share recommendations and concerns with the tax agency with the goal of strengthening taxpayer rights within the state.

Sales Tax

1. New Mexico: Managed Audits

In New Mexico, eligible taxpayers may choose to apply for a managed audit.[103] The process is essentially a self-audit, where the taxpayer will self-report tax that is due to the state. If the taxpayer completes payment within 180 days, the taxpayer will not be subject to any penalties or interest on the tax. This practice, in addition to serving as a means through which the state can raise revenue, encourages taxpayers to collaborate with the tax agency and eliminates the adversarial nature of traditional audits.

Property Tax

1. Florida and New York City, NY: Taxpayer Advocate Offices

Both the state of Florida and New York City permit their Taxpayer Advocates to assist with property tax issues.[104] This is an important function because, as discussed above, taxpayers who challenge a property tax assessment have limited rights, and the obligation to pay is generally not suspended during the appeal. Having the assistance of a taxpayer advocate ensures that taxpayer rights are protected during this process.

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[101] Information, including a link to the legislation that created the office, is available here: https://www.oregon.gov/dor/pages/taxpayer-advocate.aspx.

[102] The webpage for the Tax Advisory Council is available at https://www.in.gov/dor/about-dor/commissioners-tax-advisory-council/.

[103] More information on the managed audit process can be found at: https://www.tax.newmexico.gov/tax-professionals/wp-content/uploads/sites/6/2021/07/FYI-404.pdf.

[104] More information on the Florida Taxpayers' Rights Advocate is located at: https://floridarevenue.com/Pages/taxpayers_rights_advocate.html. More information on New York City's Office of the Taxpayer Advocate can be found here: https://www.nyc.gov/site/finance/about/taxpayer-advocate.page.