TAX CHANGES

Avalara

2024 MIDYEAR UPDATE

A TAX COMPLIANCE GUIDE FOR BUSINESSES

Contents

INTRODUCTION 3 GO

BROADENING THE SALES TAX BASE 4 GO

SHRINKING THE SALES TAX BASE 7 GO

SIMPLIFYING SALES TAX FOR REMOTE SELLERS 9 GO

MAKING OVER MARKETPLACE FACILITATOR LAWS 11 GO

CHARGING FEES FOR RETAIL DELIVERY 14 GO

RAISING AND LOWERING SALES TAX RATES 15 GO

LOOKING AHEAD 16 GO

DISCLAIMER

Introduction

You wouldn't expect to see an elephant wandering the streets of a Montana town, but had you been in Butte on April 16, 2024, you may have seen just that.

You might not expect tax-free clothing to be subject to Minnesota's new retail delivery fee, which primarily affects taxable transactions. But the fee will apply to clothing come July 1, 2024.

And though some say *there's never a dull moment in life* – or tax compliance – we all know that's not entirely true. You just never know what you'll encounter when you wake up each morning, whether you're driving through Butte or trying to keep your business compliant.

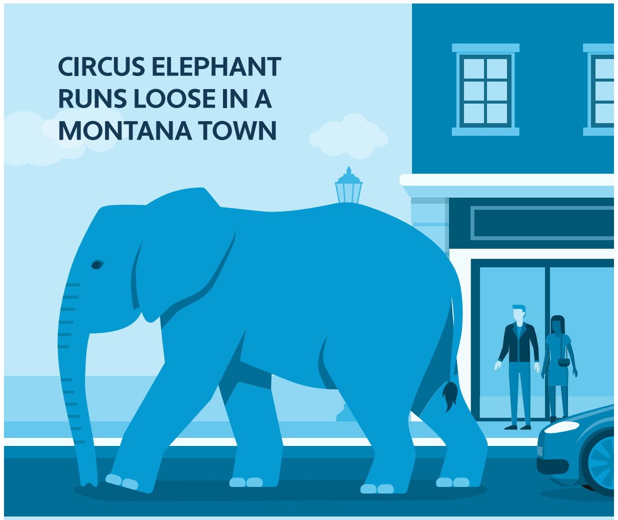
Keeping track of tax policy trends helps businesses plan and prepare for the future, but the barrage of state tax bills introduced each legislative session can make it difficult for businesses to pinpoint pertinent legislation. Lawmakers' tendency to bury tax bits in unexpected places doesn't help.

Enter the Avalara Tax Changes 2024 midyear update: a review of some of the most impactful tax trends under consideration today.

We can't cover *everything*, of course. No one tax report could. What we can do is offer a solid sampling of the tax policies currently on lawmakers' plates.

Let's dig in.

CIRCUS ELEPHANT RUNS LOOSE IN A MONTANA TOWN



On April 16, 2024, residents of Butte, Montana, were surprised to see an escaped circus elephant named Viola wandering the streets. She was recaptured without incident.

SOURCE: NPR

Broadening the sales tax base

Most states tax far more goods than services because that made sense when sales taxes were first established. But consumers now buy more services and intangible goods than *things*. As a result, the sales tax base is shrinking.

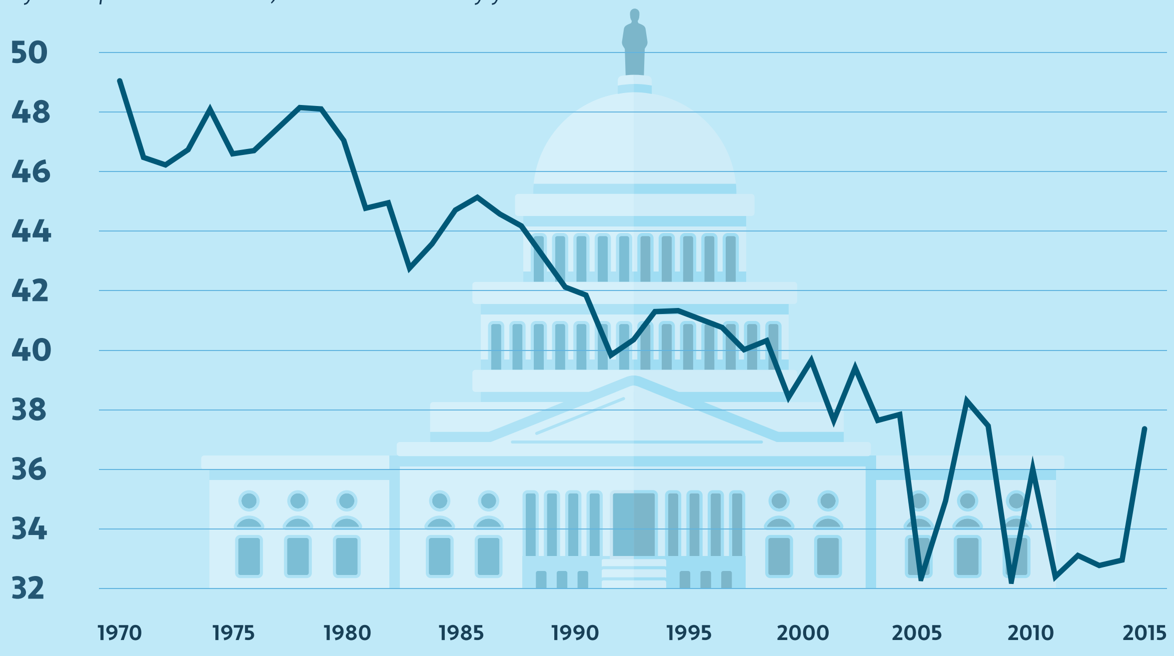
A few states do have a relatively broad sales tax base: Hawaii and New Mexico tax all but a few services; South Dakota and West Virginia each tax more than 100 services. But many states still tax few services or digital goods, which diminishes their tax base.

Politicians tend to shy away from new taxes because they aren't considered good for job security. Nonetheless, several states are looking to broaden their tax bases in the coming years.

THE SALES TAX BASE HAS BEEN SHRINKING

Mean retail sales tax breadth (implicit tax base divided by state personal income) across the states by year

SOURCE: *The Brookings Institution*



CALIFORNIA, NEBRASKA, TENNESSEE, AND DC LOOK TO TAX DIGITAL ADVERTISING

Bills seeking to tax some form of digital advertising were introduced in **California**, **Nebraska**, and **Tennessee**. Though similar in spirit, each proposed tax was unique.

For example, the Tennessee data transaction privilege tax would apply to businesses with an assessable base of $50 million or more, while the California digital advertising tax would apply to companies with at least $100 million in global annual gross revenues. Nebraska set an even higher threshold, targeting businesses with combined gross advertising revenue in excess of $1 billion.

None of these bills are likely to become law in 2024. Whether any of these states will ever tax digital advertising remains to be seen.

Washington, D.C., is also interested in taxing digital ads, but the DC Tax Revision Commission is worried about sparking a legal battle. Their concerns may be justified. The Maryland Legislature **acknowledged** in 2020 that its proposed digital advertising tax "could face legal challenges on several fronts" – and sure enough, **Maryland Attorney General Anthony Brown** has been fighting for the right to legally enforce the tax since it took effect.

A tax on the collection or mining of data could be a less controversial alternative.

DC, ILLINOIS, MASSACHUSETTS, AND NEW YORK COULD TAX DATA COLLECTION

You've probably noticed that if you search for sofas online, you'll be served so many sofa ads you might take to sitting on the floor. If you click on a post featuring fitness in your social media feed, you'll be inundated with posts about muscle machines. This all might be eerie if we weren't so accustomed to it.

WASHINGTON, DC'S PROJECTION FOR TAXATION OF DIGITAL ADS AND SERVICES

in millions

$46.6	$56.4	$68.2
FY 2025	FY 2027	FY 2029

SOURCE: *ORA*

So yeah, lots of companies collect consumer data from our online activity. And some lawmakers think it's time to tax such data extraction.

A **scalable data mining tax** under review in Washington, D.C., would apply to firms that collect data on D.C. residents. It's one of several new taxes being considered by the **DC Tax Revision Commission**, which will make final recommendations in September 2024.

Elsewhere in the country:

- **Illinois** is considering a monthly excise tax on the collection of consumer data by commercial data collectors.
- **Massachusetts** is looking to establish a graduated monthly tax on the collection of consumer data by for-profit commercial data collectors.
- **New York** is mulling over an excise tax on the collection of consumer data by commercial data collectors.

As these states strive to tax new frontiers, **Virginia** has backed away from taxing a host of digital products and services. Governor Glenn Youngkin vetoed the digital tax he proposed in his budget recommendations after the Legislature extended it to B2B transactions. And when the **final budget** was signed into law on May 13, 2024, it did not include the controversial digital tax.

Meanwhile, at least two states are trying to tax a variety of other services.

MARYLAND AND NEBRASKA LOOK TO TAX MORE SERVICES

Maryland could expand its sales tax to most services starting January 1, 2025. Sales tax would *not* apply to educational services, health care services, **grantmaking and giving services**, and services provided by business, political, professional, religious, or social associations.

In exchange for broadening the sales tax base, Maryland would **lower the sales tax rate** from 6% to 5%.

Several bills introduced in Nebraska also seek to tax a breadth of services. For instance, the **EPIC Option** would replace all income, inheritance, and property taxes with a statewide consumption tax, while **LB 388** (indefinitely postponed in April 2024) would reduce property tax and eliminate sales tax exemptions for digital advertising, veterinary services, candy, and soda. Governor Jim Pillen is intent on cutting property taxes and has **vowed to call as many special sessions** as necessary to get the results he wants.

Other legislation, also indefinitely postponed, sought to tax only select services in Nebraska, such as **admissions** to aquariums and zoos or **moving and storage services**.

Most **tax policy analysts** generally support a broader tax base. And indeed, “states probably need to tax services to meet their budgetary needs,” says Brian Smith, Senior Government Relations Director at Avalara. “But it’s not popular.” Carving out additional sales tax exemptions could get you more votes.

MARYLAND’S HOUSE BILL 1515

EXCLUSIONS TO THE SALES TAX BASE EXPANSION

SOURCE: *Maryland General Assembly*

- Educational services
- Health care or social assistance services
- Services provided by a religious organization
- Grantmaking or giving services
- Services provided by a social advocacy organization
- Services provided by a civic or social organization
- Services provided by a business, professional, labor, or political association

States probably need to tax services to meet their budgetary needs. But it’s not popular.

Brian Smith
Senior Government Relations Director, Avalara

Shrinking the sales tax base

Many states exempt essentials like food or prescription medicine to reduce the regressive nature of sales tax. Yet every sales tax exemption comes at a cost. Per the **National Conference of State Legislatures** (NCSL), "most states estimate that tax exemptions for groceries cost hundreds of millions of dollars or more."

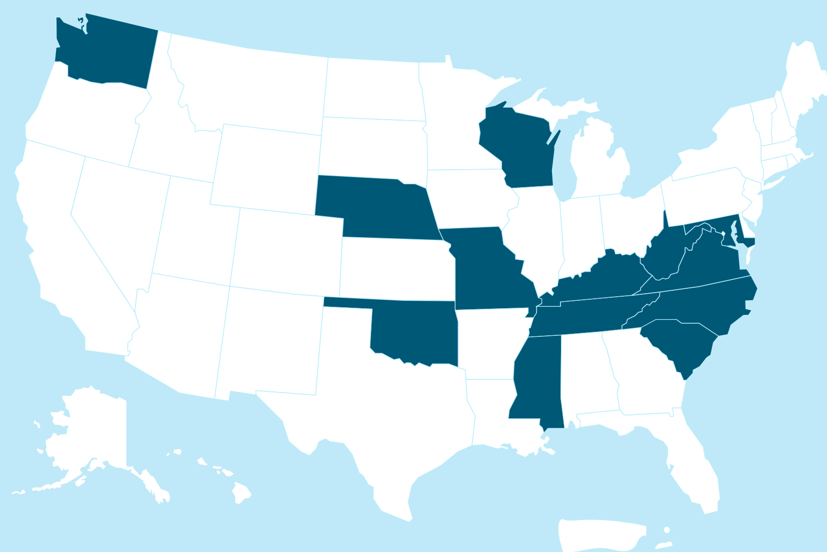
Given that, it's kind of surprising that states exempt anything at all.

FEWER PINK TAXES

Some states are looking to reduce or eliminate "**pink taxes**," a term often used to refer to sales and use taxes on menstrual products and diapers. Most of these measures have stalled or died, but **South Carolina** enacted a sales tax exemption for feminine hygiene products on May 13, 2024; it took effect immediately.

STATES LOOKING TO CUT PINK TAXES

"**Pink tax" is a term broadly used to describe various forms of gender inequality**, from the gender pay gap to the fact that some products and services for women may cost more than similar products designed for men. More specifically, pink tax refers to the sales and use tax on menstrual products.



SOURCE: *Avalara*

Eliminating tax at the state level but allowing it at the local level is an interesting twist on the taxation of food. State and local budgets aren't equal, and that inequality can lead to odd tax policy.

Scott Peterson
VP of Government Relations, Avalara

FEWER FOOD TAXES

The Kansas state **sales tax rate on food** and food ingredients has dropped from 6.5% to 2% and is scheduled to hit zero on January 1, 2025. Lawmakers attempted to move up implementation of the zero rate to **April 1** or to **July 1**, but to no avail.

Groceries *will* be exempt from the state sales tax in **Oklahoma** come August 2024. As in Kansas, local sales taxes on food continue to apply – and could even increase. A **bill** signed into law on May 8, 2024, allows local governments to raise local sales tax rates on food once the law takes effect.

"Eliminating tax at the state level but allowing it at the local level is an interesting twist on the taxation of food," says Scott Peterson, VP of Government Relations at Avalara. "State and local budgets aren't equal, and that inequality can lead to odd tax policy. Oklahoma's budget allows the state to reduce tax collections, but local governments don't have the state's budget. In this case, the difference between the state's budget and local budgets is so great, the state believes it should give locals extra taxing authority – or at least remove obstacles to that authority."

NEW AND DIFFERENT SALES TAX HOLIDAYS

Virginia has reestablished its annual summer **sales tax holiday** through July 1, 2030.

Tennessee lawmakers tried to amend price caps for the state's annual sales tax holiday. They proposed dropping the cap for clothing from $100 to $80, and increasing the cap for shoes from $100 to $150, but the bills weren't enacted.

Florida considered several new **sales tax holidays** for 2024, in addition to its existing, **overlapping holidays**. Governor Ron DeSantis signed **five new sales tax holidays** into law in May 2024, including Freedom Month, which exempts a variety of admissions and outdoor recreation equipment for the month of July.

And **new sales tax holidays** are under consideration in several states, including New Jersey, New York, and Rhode Island.

Remote retailers with an obligation to collect sales tax in multiple states may have a hard time complying with these and other sales tax proposals if enacted. Fortunately, a few states are endeavoring to simplify remote sales tax compliance.

FLORIDA'S 2024 SALES TAX HOLIDAYS

FREEDOM MONTH
July 1–31

BACK-TO-SCHOOL
July 29–August 11

TOOL TIME
September 1–7

DISASTER PREPAREDNESS
June 1–14
August 24–September 6

SOURCE: *Avalara*

Simplifying sales tax for remote sellers

Independent by nature, states typically don't like to be told what to do. Yet it's in their best interest to play well with others. Thus, the **NCSL** Task Force on State and Local Taxation aims to "promote state sovereignty while acknowledging the value of simplicity and uniformity across sales and use tax systems for both taxpayers and tax administrators."

For example, the NCSL is encouraging states to eliminate their transaction thresholds from economic nexus calculations. In the first half of 2024, two states followed their advice.

INDIANA AND WYOMING REMOVE ECONOMIC NEXUS TRANSACTION THRESHOLD

Indiana and Wyoming have eliminated their economic nexus **transactions thresholds**. The 200-transactions threshold was removed retroactively in Indiana, as of January 1, 2024. Wyoming drops its 200-transactions threshold effective July 1, 2024. Both states are left with just $100,000 sales thresholds.

"States often reduce the frequency businesses must file returns based on how much tax the business remits in a year," says Scott Peterson. "Eliminating the 200-transactions component of economic nexus eliminates really small sellers from a state's system, thereby reducing the work that goes along with them."

Utah wants to chuck its 200-transactions threshold too, but revenue concerns prevented it from doing so during the regular 2024 legislative session. It will likely keep trying, and it probably won't be alone. Many of the 20+ states that still have economic nexus transaction thresholds are **Streamlined Sales Tax** (SST) members, and SST recommends using a sales threshold only.

States often reduce the frequency businesses must file returns based on how much tax the business remits in a year. Eliminating the 200-transactions component ... eliminates really small sellers from a state's system, thereby reducing the work that goes along with them.

Scott Peterson
VP of Government Relations, Avalara

A NEW COLORADO LAW FOR
REMOTE SELLERS

SOURCE: *Colorado General Assembly*

"The bill ***prohibits home rule cities, towns, and city and counties that collect their own sales and use taxes and do not use the electronic sales and use tax simplification system*** *administered by the department of revenue (SUTS)* ***from collecting sales and use tax from a retailer that does not have physical presence in the state*** *unless the retailer elects to collect and remit sales and use tax or enters into a voluntary collection agreement with a home rule city, town, or city and county."*

HOME-RULE STATES STRIVE FOR SIMPLIFICATION

Speaking of SST, in a somewhat surprise move, an Alaska lawmaker has proposed joining the program.

There's no statewide sales tax in the **home-rule state**, but many local jurisdictions in The Last Frontier have a local sales and use tax, and many tax remote sales. Alaska **HB 142** sought to establish a 2% state sales and use tax and to authorize the state to enter the Streamlined Sales and Use Tax Agreement. However, the bill was voted down on April 11, 2024. Alaska has considered a **statewide sales tax** in the past, and it will likely do so again.

Louisiana has been working to **simplify sales tax compliance** for remote sellers, but its decentralized tax system is still facing scrutiny. A Texas-based specialty healthcare company is currently contesting assessments by two parishes that say it owes local taxes (plus penalties and interest) on sales of drugs that are exempt from the Louisiana state sales tax. The company maintains the "**many onerous features**" of Louisiana's state and local sales and use tax systems are "unduly burdensome and complex" and "discriminate against businesses."

This isn't the first time Louisiana has had to defend its tax system. A **previous case** questioning the constitutionality of its remote sales tax requirements was dropped after the state eliminated its 200-transactions remote-seller threshold.

In Colorado, another home-rule state, Governor Jared Polis signed a **law** to make local sales tax compliance less onerous for remote sellers. Home-rule jurisdictions that don't use the state sales and use tax simplification system (SUTS) can no longer require businesses with no physical presence in the state to collect and remit local sales tax.

Colorado also enacted several additional **sales tax simplification measures**:

- **SB24-023** requires local tax authorities to hold taxpayers harmless if they rely on erroneous sales and use tax information in the state's **geographic information system**.
- **SB24-025** harmonizes the state administration of local taxes.
- **SB24-024** simplifies local lodging tax compliance for lodging marketplaces.

Marketplace facilitator laws in all states help ease the burden of compliance for many remote sellers. Unfortunately, marketplace laws are often broad or lack clarity.

Making over marketplace facilitator laws

Both the **NCSL** and the **Multistate Tax Commission** are encouraging states to clarify and standardize definitions in their marketplace facilitator laws. Each has developed model language to help states amend these laws. Some states are, with mixed results.

Like we said, states are independent sorts.

CALIFORNIA ADOPTS BROAD MARKETPLACE REGULATION

Under California **Regulation 1684.5**, any business handling the fulfillment, payment, or storage of products for sale is a marketplace facilitator responsible for California sales tax. So is any business that lists products, sets prices, provides customer service, or takes orders on behalf of a marketplace seller.

"California Regulation 1684.5 has provided a template for other jurisdictions to expand and broaden their own marketplace facilitator laws," says Brian Smith. Yet the broad nature of the regulation could be problematic. "A marketplace

A marketplace facilitator is required to collect California sales tax for marketplace sellers if it engages in just ONE factor from Column A and ONE factor from Column B

COLUMN A	COLUMN B
• Transmitting or otherwise communicating the offer or acceptance between the buyer and seller • Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together in a marketplace • Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller • Software development or research and development activities related to any of the activities described in Column B, if such activities are directly related to a marketplace operated by the marketplace facilitator or a related entity	With respect to the marketplace seller's products: • Payment processing services • Fulfillment or storage services • Listing products for sale • Setting prices • Branding sales as those of the marketplace facilitator • Providing customer service or accepting or assisting with returns or exchanges • Order taking

SOURCE: *CDTFA*

may be liable for collecting tax but also may have no awareness of transactional data and no ability to collect and remit tax."

And California isn't alone.

FLORIDA CLARIFIES TAX COLLECTION RESPONSIBILITIES FOR MARKETPLACES

The Sunshine State has been working to clarify requirements for food delivery platforms and advertising platforms.

As of April 2, 2024, agreements between food delivery platforms and food service establishments must **identify the party responsible** for collecting and remitting applicable sales taxes.

Under **SB 280**, an advertising platform that owns, operates, or manages a vacation rental would have to collect and remit applicable taxes from *the guest*. An advertising platform that doesn't own, operate, or manage the vacation rental would have to collect and remit applicable taxes from *the owner, operator, or manager*. Though Florida SB 280 didn't make it into law this year, it's worth highlighting.

"It represents a definite shift from what's been happening over the last years where marketplaces – which generally don't own, operate, or manage the vacation rentals on their site – *were* held responsible for the collection and remittance of the taxes," says Pamela Knudsen, Senior Director of Compliance Services

A marketplace may be liable for collecting tax but also may have no awareness of transactional data and no ability to collect and remit tax.

Brian Smith
Senior Government Relations Director at Avalara, on California's new marketplace regulation

This shift would potentially impact the agreements that Airbnb, Vrbo, and others have, causing confusion for the short-term rental owners.

Pamela Knudsen
Senior Director of Compliance Services at Avalara, on a Florida bill about advertising platforms

at Avalara. "This shift would potentially impact the agreements that Airbnb, Vrbo, and others have, causing confusion for the short-term rental owners; they may consider that Airbnb 'manages' their short-term rental and would be responsible for the taxes."

MASSACHUSETTS UPDATES REQUIREMENTS RELATED TO MARIJUANA, MOTOR VEHICLES

On April 12, 2024, the Massachusetts Department of Revenue issued a final **regulation** related to marketplace transactions. Per the regulation:

- Marketplace facilitator requirements do *not* apply to persons facilitating sales of marijuana or marijuana products on behalf of marijuana retailers.
- When a person facilitating motor vehicle rentals is considered a marketplace facilitator, they must collect applicable vehicular transaction contract surcharges.

ALABAMA SETS TAX OBLIGATIONS FOR ACCOMMODATIONS PLATFORMS

Alabama will require accommodations intermediaries to collect and remit applicable transient occupancy taxes from accommodations providers starting January 1, 2025. Both the intermediaries and the providers must submit annual reports to the Alabama Department of Revenue.

OHIO WOULD REMOVE TAX OBLIGATION FOR LOCAL DELIVERY NETWORK COMPANIES

Ohio **HB 424** and **SB 224** would allow delivery network companies to obtain a waiver from the requirement to collect and remit sales or use tax when coordinating delivery between customers and local businesses located within 75 miles of each other. According to one of the bill's sponsors, this would remove "**unintended double taxation** that can occur when using delivery services such as Instacart and Uber Eats."

Colorado and Minnesota have taken a different approach.

DELIVERING WITHIN
75 MILES

Legislation in Ohio would allow qualifying delivery network companies to **obtain a waiver from the requirement to collect and remit sales or use tax when coordinating deliveries of local products to a location not more than 75 miles from the business** where the product was picked up.

SOURCE: *HB 424*, *SB 224*

Charging fees for retail delivery

Two states have enacted retail delivery fees on deliveries made by motor vehicle in the state. **Colorado's** fee took effect July 1, 2022. The higher **Minnesota** fee kicks in July 1, 2024, unless opponents of the fee manage to repeal it via **HF 4504** or **SF 4772**.

You know how we talked about the importance of simplifying sales tax obligations for remote sellers? Well, there's nothing simple about retail delivery fees.

These two retail delivery fees are similar, but there are some key differences.

For example, Colorado's fee only applies to deliveries containing a taxable good; if every item in a retail sale is exempt from sales tax, the delivery is also exempt from the retail delivery fee.

The Minnesota fee also only applies to taxable transactions – *except* it applies to clothing as well, and clothing is generally exempt from Minnesota sales tax. Furthermore, deliveries of many taxable products are exempt from the fee.

Another difference: Colorado requires a separate return for the retail delivery fee, while the Minnesota fee will be reported on the sales and use tax return.

In short, these retail delivery fees are hard for companies. "It takes a huge amount of time to adapt business systems to a change of this magnitude," says Brian Smith, who had the fun experience of running five different systems while at DIRECTV.

By contrast, dealing with sales tax rate changes is often a much lighter lift.

MINNESOTA RETAIL DELIVERY FEE

The fee applies to each transaction where charges for these items equal or exceed $100:

- Tangible personal property
- Clothing

Taxable products that are EXEMPT from the fee include:

- Medical devices
- Food
- Breast pumps
- Car seats

SOURCE: *Minnesota Department of Revenue*

Raising and lowering sales tax rates

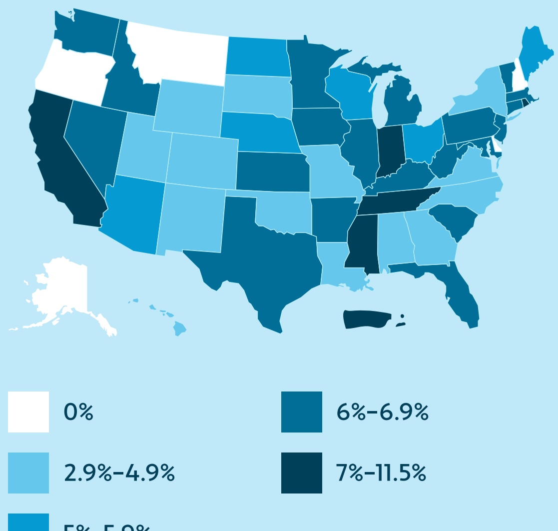
Washington, D.C., Mayor Muriel Bowser has put forward a "**modest sales tax increase**." Her budget proposes raising the **general sales tax rate** from 6% to 6.5% in fiscal year 2026 then to **7%** in fiscal year 2027.

Nebraska Governor Pillen wanted to raise the state sales and use tax rate by 1% (after backing away from a suggested increase of 2%) in order to **reduce property tax** by about 30%, but lawmakers balked at the idea. The Legislature will likely be called back for a special session so the governor can "achieve significant **property tax reform**."

VIRGINIA SAYS NO TO MORE LOCAL SALES TAXES

Bucking this trend, Governor Glenn Youngkin **vetoed a bill** that would have authorized all counties and cities in Virginia to impose an additional local sales and use tax. The proposal could have generated nearly $1.5 billion a year in sales tax revenue.

STATE SALES TAX RATES
as of June 2024



SOURCE: *Avalara*

OKLAHOMA ALLOWS ADDITIONAL COUNTY SALES TAXES

On May 13, 2024, Oklahoma Governor Kevin Stitt signed a **bill** allowing counties to levy a 1% sales tax on most transactions that are subject to the state sales tax – provided voters in each county approve a tax increase. Revenue generated by such additional county sales taxes will fund emergency medical services. The bill takes effect November 1, 2024.

MISSISSIPPI LOWERS SALES TAX RATE FOR EQUIPMENT AND MATERIALS RELATED TO MINERAL RESOURCES

And on May 8, 2024, Mississippi Governor Tate Reeves signed a **bill** that lowers the sales tax rate on equipment and services used in connection with geophysical surveying, exploring, developing, drilling, redrilling, completing, working over, producing, distributing, or testing oil, gas, and other mineral resources. The sales tax rate on these transactions will drop from 7% to 4.5% effective July 1, 2024.

Looking ahead

No one wants to be caught off guard by a tax change. To comply with new requirements, like retail delivery fees, businesses must spend an enormous amount of time updating and configuring their systems. The sooner you know about an upcoming change, the better you'll be able to meet it. Or you can evaluate **sales tax automation software** that offloads the burden of tax compliance from your internal teams.

You'll find more details about 2024 tax policy changes in our full **Avalara Tax Changes 2024 report** (it's 160+ pages) and our **on-demand webinars**. They're chock-full of insights and data to help you navigate the rest of this year.

READ THE FULL REPORT

Or give us a call at **877-224-3650**. Avalara is committed to ensuring tax compliance doesn't interfere with the growth or success of your business. Discover how automating tax compliance helps businesses track and comply with ever-changing tax laws around the world.