TAX CHANGES

Avalara

2023

A TAX COMPLIANCE GUIDE FOR BUSINESSES

Contents

As in past years, Avalara Tax Changes covers many of the key issues complicating tax compliance for businesses today: cryptocurrency, e-invoicing, sales tax holidays, the Superfund, to name a few. We invite you to get comfortable and settle in for a good read.

DISCLAIMER

Tax rates, rules, and regulations change frequently. Although we hope you'll find this information helpful, this report is for informational purposes only and does not provide legal or tax advice.

Introduction

The events of the past few years have challenged us all, personally and professionally. COVID-19, geopolitical instability, and economic volatility have mired businesses, governments, and individuals in uncertainty. We're still in the weeds, whatever we do and wherever we are.

"The global economy is experiencing a number of turbulent challenges," noted the **International Monetary Fund** (IMF) in October 2022. "Inflation higher than seen in several decades, tightening financial conditions in most regions, Russia's invasion of Ukraine, and the lingering COVID-19 pandemic all weigh heavily on the outlook." Given the state of affairs, the IMF predicts global economic growth will slow from 6% in 2021 to 3.2% in 2022 and 2.7% in 2023.

Facing higher costs for food, energy, and other necessities, thousands of nurses, teachers, postal workers, and employees of the energy sector in France participated in **strikes** during the fall of 2022. Around the same time, the bullish new prime minister of the United Kingdom **resigned** after just 45 days in office, the fourth to do so since the 2016 Brexit vote. And the United Nations **Economic Commission for Latin America and the Caribbean** forecast Latin American and Caribbean countries will face "an unfavorable international context" in 2023.

5 U.K. PRIME MINISTERS in 6 years

RISHI SUNAK
Oct 2022–present

THERESA MAY
Jul 2016–Jul 2019

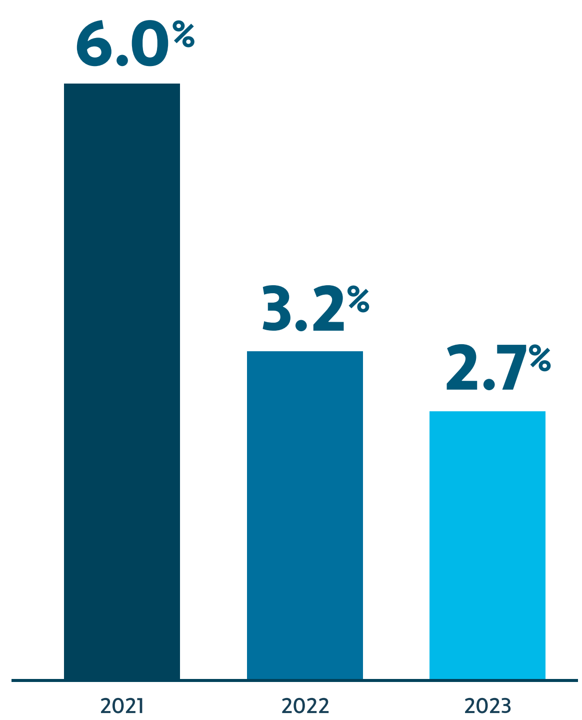
LIZ TRUSS
Sep 2022–Oct 2022

DAVID CAMERON
May 2010–Jul 2016

BORIS JOHNSON
Jul 2019–Sep 2022

SOURCE: *NPR*

GLOBAL ECONOMIC GROWTH FORECAST



SOURCE: *IMF*

But the news isn't all bad. Children are back in school, adults are returning to the office, and the end of the COVID pandemic is "**in sight**." State coffers in the United States are in pretty good shape and the **National Conference of State Legislatures** expects state financial situations for fiscal year 2023 to "stay strong."

As for how all this will affect tax compliance, well, you know the drill: Governments worldwide will change tax policies in response to changing circumstances. Businesses across all industries will deal with the fallout because that's what businesses do.

In our seventh annual tax changes report, the tax experts at Avalara examine emerging trends in taxation and compliance as it relates to:

We can't address everything, of course. The world is too big, tax too complex, and attention spans too short. What follows will give you an overview of some of today's key issues and what to look out for tomorrow.

Let's do this.

Sales tax

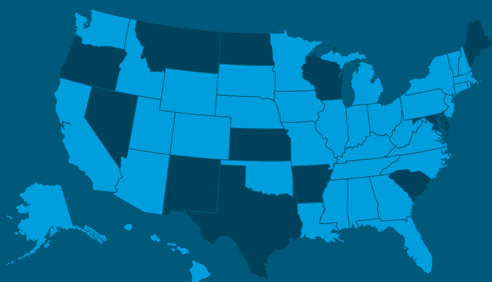
WHAT THE NUMBERS TELL US

Digital tokens

STATES INTRODUCED CRYPTOCURRENCY LEGISLATION

37

IN 2022



SOURCE: NCSL

WORLDWIDE USERS

300M+

IN 2022

SOURCE: Buy Bitcoin Worldwide

TYPES OF CRYPTO

6,000+

VALUE OF BITCOIN

$4.00

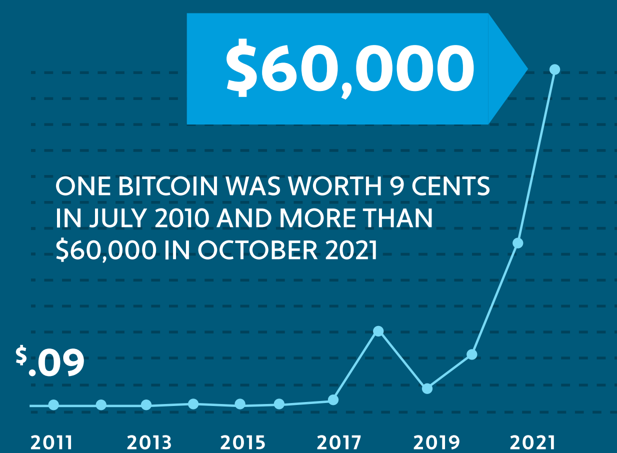
invested in mid-July 2010

WAS WORTH MORE THAN

$1,000,000

IN MID-JULY 2022

SOURCE: Alioth



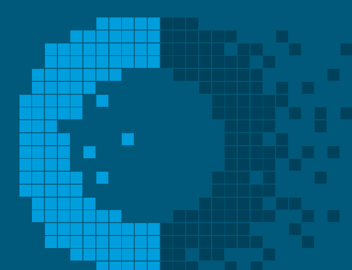
SOURCE: Buy Bitcoin Worldwide

RECORDED NFT SALES

50%

are less than

$200



SOURCE: Nansen

SALES TAX

Digital tokens: Cryptocurrency and NFTs enter the mainstream

It's getting harder for state legislatures and departments of revenue to ignore bitcoin, blockchain, cryptocurrency, digital currency, and NFTs.

Lawmakers in approximately **37 states** introduced a wide range of legislation related to cryptocurrency in 2022. Proposals included Arizona SB 1493, to allow government agencies to pay public employees' salaries in virtual currency upon request; Missouri HB 2672, to exempt virtual currencies from taxation; Oklahoma SB 590, to provide a sales tax exemption for equipment and machinery used in digital asset mining; and Wyoming SF 56, to allow lottery tickets to be purchased with virtual currency.

None of those bills gained much traction, but several bills did become law. These include:

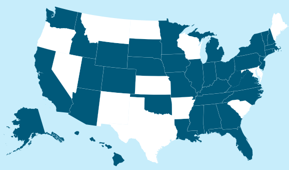
- **Hawaii SB 2695**, to create a blockchain and cryptocurrency task force
- **Missouri HB 1472**, to include blockchain technology in money laundering offenses
- **Tennessee SB 535**, to prohibit local government entities from dealing in blockchain, cryptocurrency, or NFTs without written approval from the state treasurer
- **Utah SB 182**, to establish a framework for the regulation of digital assets
- **Virginia HB 263**, to permit banks in Virginia to provide virtual currency custody services

"All but one of the enacted bills on this list regulate or restrict crypto," observes Scott Peterson, VP of Government Relations at Avalara. "Is that the direction states will go? Looks like it could be a pattern."

Perhaps.

Senior Director of North America Tax Content at Avalara David Lingerfelt believes states won't be able to ignore cryptocurrency as a form of payment for long because sooner or later the reality of the crypto economy will impose itself on states.

37



STATES

introduced legislation related to cryptocurrency in 2022

SOURCE: NCSL

"In the short term, there are barriers to cryptocurrency adoption," Lingerfelt explains. Today, the IRS categorizes cryptocurrency as property and taxpayers incur an income tax loss or gain when they use cryptocurrency as payment for taxes. Eventually, states will have to build processes to convert cryptocurrency to fiat currency, plan for the costs of conversion, and determine how to absorb the costs or pass them on to taxpayers.

Lingerfelt says states moved to digital ACH debit and credit card payments and away from paper checks because they're faster and cost less to process. "Ultimately, for the same reasons, states will adopt cryptocurrency. State adoption will accelerate when stable coins become mainstream."

Colorado shows how that can be done.

> "In the short term, there are barriers to cryptocurrency adoption. Ultimately ... states will adopt cryptocurrency. State adoption will accelerate when stable coins become mainstream."

PAYING YOUR TAXES WITH CRYPTOCURRENCY WILL COST YOU

The Colorado Department of Revenue began accepting cryptocurrency for all **state tax payments** starting September 1, 2022.

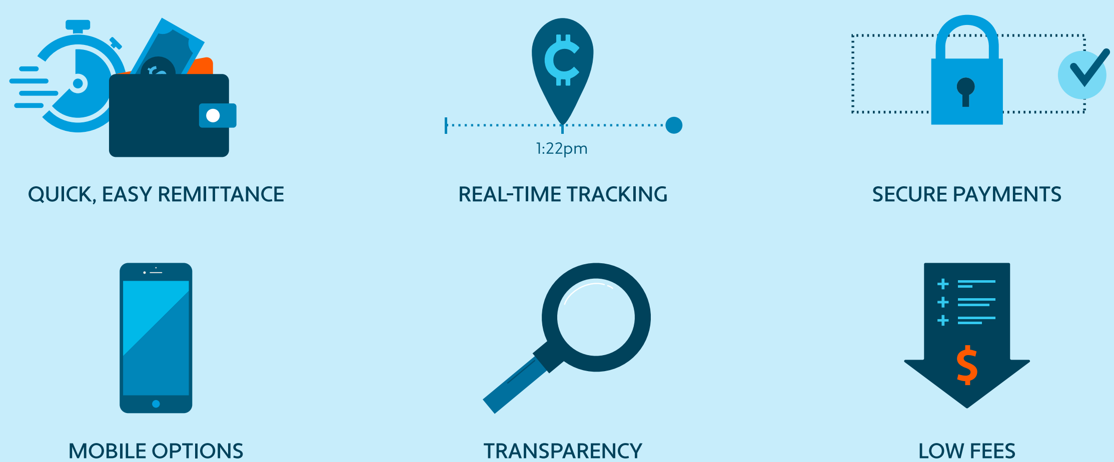
Colorado will charge taxpayers an extra service fee for the privilege of paying their taxes in cryptocurrency: $1.00 plus 1.83% of the payment amount. That's not all. An **additional fee** applies when taxpayers purchase cryptocurrency on PayPal (the only cryptocurrency wallet accepted by the state), while taxpayers who transfer cryptocurrency from an external wallet to their PayPal Cryptocurrencies Hub are subject to applicable miner/gas fees.

It'll be interesting to see where this all goes, if anywhere, especially given the volatility of the **cryptocurrency market** in November 2022. Ohio began **accepting cryptocurrency tax payments** back in November 2018, but stopped less than a year later. If the experiment proves successful in Colorado, other states may follow suit. Arizona, California, and New York have already shown interest.

On the other hand, in November 2022, New York Governor Kathy Hochul approved a **moratorium** on certain cryptocurrency mining operations due to their potential impact on climate change.

WHY PAY WITH CRYPTOCURRENCY?

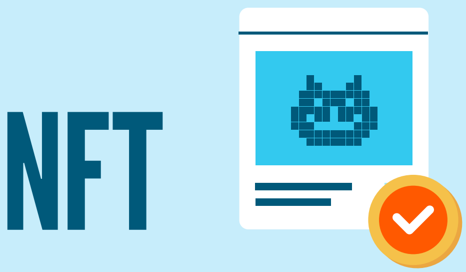
SOURCE: *Avalara*



NFTS MAY BE SUBJECT TO SALES TAX

A cryptocurrency like bitcoin is a type of digital token that's fungible, meaning it can be exchanged or replaced by something else of equal value. Of course, values can fluctuate wildly: One bitcoin was worth **9 cents** in July 2010 and more than $60,000 in October 2021.

An NFT is a non-fungible token that's unique, cannot be replicated, and is recorded in a blockchain to certify authenticity and ownership. NFTs have been around since 2014 but didn't become a household name (or get closer to becoming one) until 2021, when Beeple's *Everydays* sold for $69.3 million and Pak's *The Merge* sold for $91.8 million.



An NFT is a non-fungible token that's unique, cannot be replicated, and is recorded in a blockchain to certify authenticity and ownership.

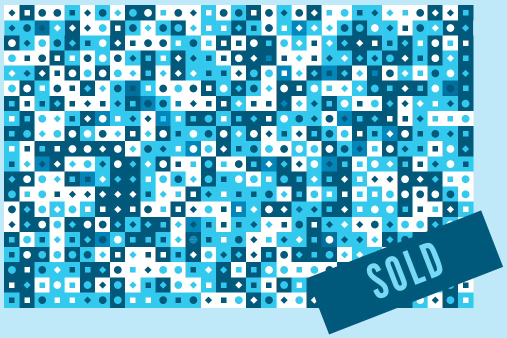
SOURCE: *Investopedia*

With that kind of money changing hands, or crypto wallets, it was only a matter of time before states got serious about **taxing NFTs**.

In February 2022, the **Treasury Department of Puerto Rico** proposed treating NFTs as a taxable digital product. In May 2022, the **Pennsylvania Department of Revenue** added NFTs to its list of digital products subject to sales tax. And on July 1, 2022, the **Washington State Department of Revenue** issued detailed interim guidance on the taxability of transactions involving NFTs; there's a lot to unpack, but the takeaway is that Washington state generally considers NFTs to be subject to sales tax.

Not all NFTs command millions of dollars, but the fact that some do will likely turn more tax officials' heads. **Minnesota** and **Wisconsin** have determined that NFTs are subject to sales tax when the underlying goods and services are taxable. Additional states will probably decide to tax NFTs in 2023 and beyond. As they do, they'll need to sort out issues like which taxing authority has jurisdiction over NFT transactions, whether gas fees should be subject to tax, and so forth. (Per **The Motley Fool**, NFT gas fees refer to "the money paid to blockchain miners for processing the transaction that is embedded in the blockchain.")

Because NFTs are new and complex, states will need to figure out how NFT transactions work before they can decide whether to tax or exempt them. As Washington explains in its interim guidance, "In order to determine the proper tax treatment of a given transaction involving an NFT, it is critical to consider: a) whether the transaction



BEEPLE'S *EVERYDAYS* SOLD FOR

$69.3M

PAK'S *THE MERGE* SOLD FOR

$91.8M

SOURCE: *Dow Jones & Company*

is comprised of multiple components or merely a digital code which grants the owner access to a digital good, b) the taxability of each underlying component, and c) the identity of the parties to the transaction."

Scott Peterson reminds that there's likely to be additional complexity in Colorado and other home-rule states. Local governments in Colorado, like **Boulder**, have the authority to tax sales that aren't subject to the state sales tax, or to exempt transactions that are.

Some folks may roll their eyes at cryptocurrencies and NFTs, but for entities interested in doing business in the metaverse, cryptocurrency and NFTs may be indispensable.

WHAT IS AN NFT GAS FEE?

A gas fee is the payment individuals make to complete a transaction on a blockchain. These fees are used to compensate blockchain miners for the computing power they have to use to verify blockchain transactions, and they are typically paid in the blockchain's native cryptocurrency.

SOURCE: *NFT Now*

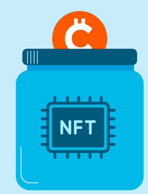
WHY ARE NFT GAS FEES HIGH?

NETWORK ACTIVITY

The more transaction requests made, the higher the fee.

AMOUNT OF DATA

The larger the transaction size, the more gas used to execute it.



MINER TIP

NFT artists and buyers can pay a "tip" to a miner to have their transaction verified before other transactions waiting in the queue.

SOURCE: *The Motley Fool*

The metaverse

PROJECTED IMPACT ON ECOMMERCE

$2.6T

IN THE METAVERSE BY 2030

SOURCE: McKinsey

2030 PROJECTED IMPACT BY INDUSTRY

$180B TO **$270B**

VIRTUAL LEARNING

$144B TO **$206B**

ADVERTISING

$108B TO **$125B**

GAMING

GLOBAL DIGITAL TWIN MARKET

$6B — 2021

$131B — 2030

SOURCE: Strategic Market Research

CONSUMERS EXCITED TO TRANSITION EVERYDAY ACTIVITIES TO THE METAVERSE

59%

SOURCE: McKinsey

PROJECTED 2030 GLOBAL MARKET VALUE

$678B

$47.48B IN 2022

SOURCE: GlobeNewswire

SALES TAX

The metaverse unlocks a world of tax issues

There's a lot more to the metaverse than concerts, fashion shows, flashy skins, and virtual property bubbles.

City planners in Boston use **digital twins** for development and planning purposes, and digital identities help unhoused people in Austin access healthcare. Federal and state agencies use artificial intelligence (AI) and metaverse technologies to simulate and study **wildfires** to mitigate their damage. **NASA** uses the metaverse to simulate life on Mars.

Everyone will likely be using the metaverse in some form or another within five years, predicts **EY** Global Leader Blockchain Tax Services Dennis Post. Activities could include entertainment and virtual travel, but also remote work and virtual healthcare visits. So governments will need to determine how their tax laws apply to transactions occurring in and through the metaverse and Web3 – the next iteration of the internet.

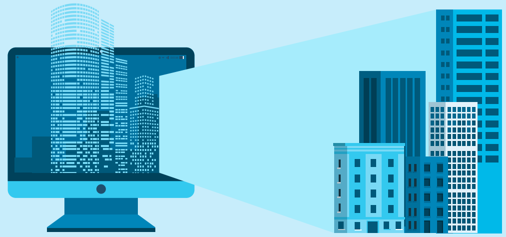
The new technology is "already triggering myriad taxable events," according to EY, and there are many questions in need of answers. To name just two:

1. Which taxing authority has jurisdiction over transactions occurring in virtual worlds?

2. Do tax events like **sales tax holidays** transfer to the metaverse?

States will need to define new technologies, for tax purposes, and decide how to tax bundled transactions. Where allowed, differences between state and local tax policies will need to be addressed. There's a lot to do.

David Lingerfelt believes tax issues related to the metaverse, cryptocurrency, and NFTs will be the next Wayfair event in indirect tax, referring to the 2018 decision by the U.S. Supreme Court that allowed states to tax online sales. He draws this comparison because of the rapid pace of change, the confusion over how to tax these transactions,



WHAT IS A DIGITAL TWIN?

A digital twin is a virtual model designed to accurately reflect an object or system. More specifically, a digital twin would be **a digitized copy of a city**, built as a virtual scale 3D model.

SOURCE: *NLC*

$280B

Estimated cost savings U.S. cities will achieve by using digital twins

SOURCE: *NLC*

and the looming tide of cases that will challenge the taxation of NFTs and metaverse transactions.

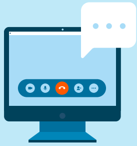
"Web3 is ushering in a rapid economic transformation that will be powered by blockchains and avatars, and there's a lack of clarity and uniformity on how to tax these transactions," Lingerfelt explains. "This is likely to generate numerous tax controversies as jurisdictions struggle to modify their statutes and guidance to keep pace with this evolving technology."

Meanwhile, some states are still struggling to smooth out online sales tax issues stemming from Wayfair.

WEB 1.0

READ-ONLY WEB

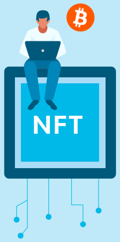
Users read and share information over webpages created by a limited group of creators but cannot interact with the content.



WEB 2.0

READ-WRITE WEB

Users can read, write, modify, and interact with content, as well as communicate and collaborate with other users. This enables two-way communication, but this experience happens through established platforms or websites.



WEB 3

FUTURE OF THE WEB

Users have the power and ability to create and control their creations (avatars, digital assets), exchange value (cryptocurrencies, non-fungible tokens), and self-govern (decentralized autonomous organizations).

SOURCE: *NLC*

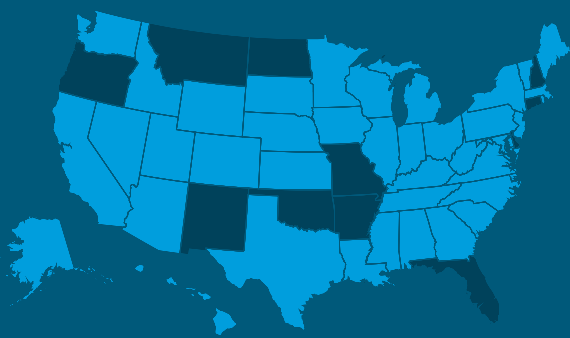
Online sales tax

INCLUDE EXEMPT SALES IN ECONOMIC NEXUS THRESHOLDS

39

STATES

+Puerto Rico and Washington, D.C.

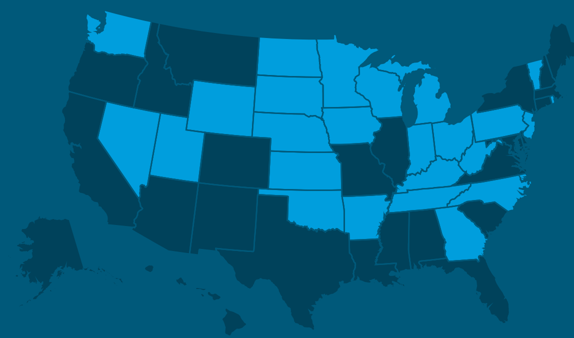


SOURCE: *Avalara*

OFFSET THE COST OF CERTAIN SALES TAX SOFTWARE

25

STATES



SOURCE: *Avalara*

THIRD-PARTY MARKETPLACES

59%

ALL GLOBAL ECOMMERCE

by 2027

500%

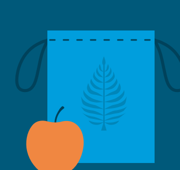
INCREASE IN THE NUMBER OF THIRD-PARTY MARKETPLACES

operating globally since 2007

SOURCE: *InternetRetailing*

FASTEST-GROWING CATEGORIES

CAGR



11%

EDIBLE GROCERY

10.6%

HOUSEHOLD & PET CARE

10.5%

OFFICE SUPPLIES

Online sales tax: Wayfair comes full circle

The U.S. Supreme Court decision in South Dakota v. Wayfair, Inc. was both simple and significant.

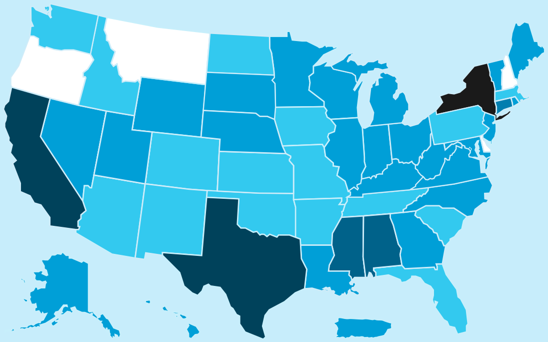
Before the Wayfair decision in 2018, states could generally require a business to collect sales tax only if the business had a physical connection to the state. The ruling allowed states to tax businesses with no physical presence in the state (remote businesses) in addition to in-state businesses.

Simple.

By January 1, 2020, nearly every state with a general sales tax had an **economic nexus law** requiring remote retailers to register for and collect sales tax if their sales in the state exceed a certain threshold. Nexus is the connection that allows a state to tax a business. Economic nexus is the kind of connection that's economic, like having $100,000 in sales in the state during the previous calendar year.

Significant.

WHAT TRIGGERS ECONOMIC NEXUS?



- NO ECONOMIC NEXUS
- $100,000
- $250,000
- $500,000
- $100,000 OR 200 TRANSACTIONS
- $100,000 AND 200 TRANSACTIONS
- $500,000 AND 100 TRANSACTIONS

SOURCE: *Avalara*

Florida and Missouri were the last two states to adopt economic nexus laws, for different reasons. Florida's governor at the time was opposed to taxing remote sales. Missouri lawmakers were stymied by the complexity of the state's sales tax system.

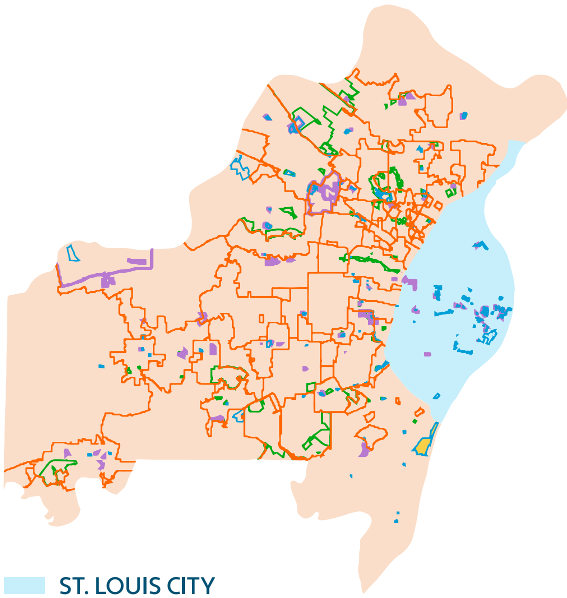
The Sunshine State adopted economic nexus in April 2021 and began requiring remote sellers to collect and remit sales tax on **July 1, 2021**. True to form, Florida didn't give businesses much time to prepare.

Missouri took the opposite approach.

ECONOMIC NEXUS IN MISSOURI. IT'S BEEN A LONG TIME COMING.

On June 30, 2021, the governor of Missouri signed an economic nexus bill requiring the state to tax remote sales effective January 1, 2023. It seems the Missouri Department of Revenue needed every bit of that time to simplify its complex sales and use tax system, which includes more than 2,000 overlapping tax jurisdictions.

(A FEW) MISSOURI SALES TAX JURISDICTIONS



SOURCE: *Missouri Department of Revenue*

The complexity of Missouri's sales and use tax system is a real issue. In the **Wayfair decision**, the Supreme Court noted that "South Dakota's tax system includes several features that appear designed to prevent discrimination against or undue burdens upon interstate commerce," and that the state participates in the **Streamlined Sales and Use Tax Agreement** (SSUTA or SST).

The SST program reduces the burden and cost of sales and use tax compliance for remote businesses by requiring member states to have:

- A central, electronic registration system
- Consumer privacy protection
- Simplified administration of exemptions
- Simplified state and local tax rates, remittances, and returns
- State administration of sales and use tax collections
- Uniform state and local tax bases, definitions, rules, and sourcing

On top of that, the 24 SST member states will pay for software and services provided by a **certified service provider** (CSP) to qualifying remote businesses. **Pennsylvania**, which is not a member of SST, provides a similar program.

The Supreme Court didn't mandate membership in SST, but most states got the message: If you want to tax remote sales, you'd better do what you can to make sales tax compliance less onerous.

Missouri's been working on it, though the full extent of its simplification measures won't be known until the **Department of Revenue** publishes guidance and requirements for remote sellers. The department will also address the state's new marketplace facilitator law, which took effect January 1, 2023, as well.

MORPHING REQUIREMENTS FOR MARKETPLACE FACILITATORS AND SELLERS

As Missouri prepares to require **marketplace facilitators** to collect and remit sales tax on behalf of third-party sellers, other states are elbow-deep in clarifying and updating existing laws. "While there is very little question whether someone is a seller," says Scott Peterson, "it can be difficult to know if what you do qualifies as a marketplace."

Marketplace transactions account for approximately **67%** of global ecommerce, and sales by third-party sellers are **growing at the fastest pace**. Marketplace laws affect both facilitators (e.g., Amazon, eBay) and the third-party businesses that sell through the platforms, yet in May 2022, a **survey** of hundreds of U.S.-based businesses found that many businesses of varying sizes weren't sure they were doing what's necessary to comply with marketplace facilitator laws. In fact, confidence was lower than it had been at any point during the six waves of the survey (December 2019 through May 2022).

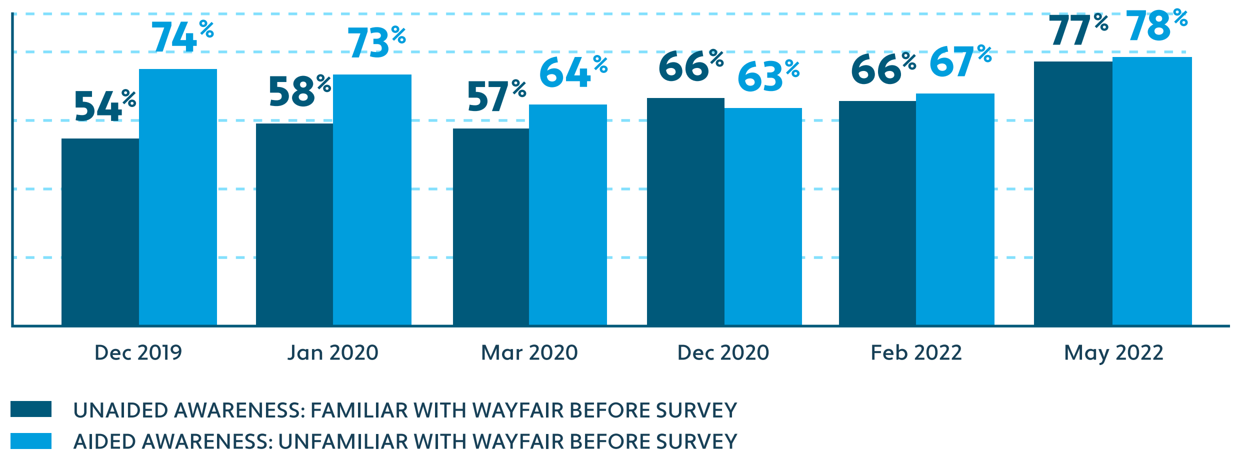
Small businesses may not be sure what marketplace laws require of them, notes Liz Armbruester, EVP of Customer and Compliance Operations at Avalara. "The requirements have changed frequently, and the calculation and reporting of tax due is often different when selling on a marketplace versus their own ecommerce site. It's a lot to manage for a small business."

Large businesses surveyed in May 2022 were more aware of the impact of marketplace facilitator laws than the large businesses that were surveyed in previous waves. That could be because large businesses are more likely than small businesses to have tax experts advising them on their responsibilities. Large businesses may also be more likely than small businesses to be marketplace operators themselves.

DOES MARKETPLACE INVENTORY CREATE NEXUS?

One issue facing marketplace sellers is whether marketplace inventory establishes physical presence nexus for them. Several states have held marketplace sellers liable for past sales tax because of inventory in the state. Marketplace sellers are fighting the assessments, and in September 2022, a **Pennsylvania** court determined that having inventory placed in Fulfillment by Amazon (FBA) warehouses does not, in and of itself, create a sales tax obligation for nonresident FBA sellers. The following month, a spokesperson from the Pennsylvania Department of Revenue said it wouldn't appeal the decision because the case lacked "**broader applicability**."

AWARENESS OF SOUTH DAKOTA V. WAYFAIR, INC.



SOURCE: Avalara

SOURCE: Digital Commerce 360

$3.23T

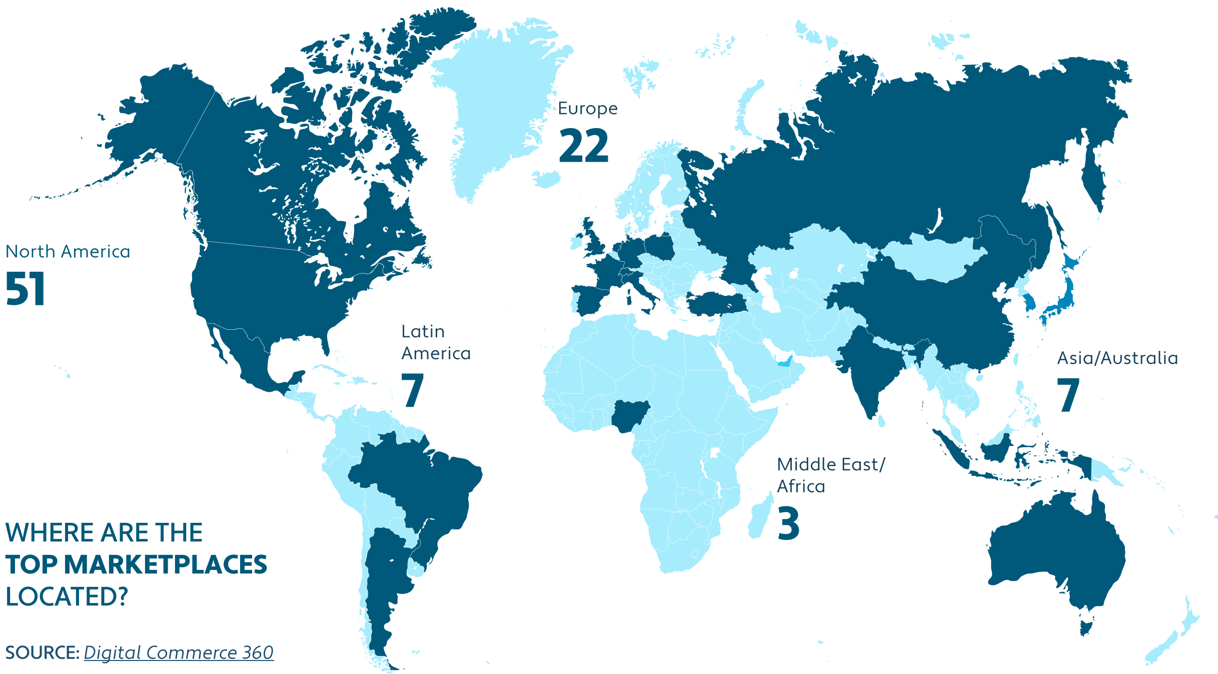
SPENT GLOBALLY

on the top 100 online marketplaces in 2021

67%

GLOBAL ECOMMERCE SALES

were through marketplace transactions in 2021



WHERE ARE THE **TOP MARKETPLACES** LOCATED?

SOURCE: *Digital Commerce 360*

Still, we'll likely see more developments on this front in 2023. More than **20 states** specify that having marketplace inventory in the state creates physical presence nexus for third-party sellers. California, Washington, and Wisconsin are holding FBA sellers liable for past sales tax based on their marketplace inventory. The executive director of the Online Merchants Guild, which brought the case against Pennsylvania, expects it will take **a long time to resolve** this issue.

TAX REQUIREMENTS FOR MARKETPLACES ARE IN FLUX

Meanwhile, marketplace facilitators must continually respond to changing requirements as states amend and clarify their marketplace facilitator laws and rules. Recent updates include:

- **Colorado** and **Oklahoma** require online marketplaces to collect and report information on high-volume sellers starting January 1, 2023; **other states** are looking to do the same
- **Tennessee** determined certain marketplace facilitator fees are not subject to sales tax
- **Oklahoma** is requiring marketplace facilitators to collect and remit applicable local taxes as of January 1, 2023

Many states are also scrutinizing requirements for **food delivery marketplaces**, **car-sharing platforms**, and marketplaces serving the **lodging industry**. See the **lodging tax section** for more details.

There's additional complexity for marketplaces doing business outside of the U.S. For example, as of July 1, 2022, **British Columbia** requires marketplace facilitators to collect and remit Provincial Sales Tax (PST) on certain online marketplace services. See the **global tax section** for more details.

STATES CONSIDERING REQUIREMENTS FOR ONLINE MARKETPLACES

collecting and reporting information on high-volume sellers

ALABAMA
ARKANSAS
CALIFORNIA
GEORGIA
IOWA
KANSAS
MASSACHUSETTS
NEBRASKA
NEW HAMPSHIRE
OHIO
OKLAHOMA
TENNESSEE
WASHINGTON

SOURCE: *Avalara*

Local tax

282,81

AVALARA AVATAX TAX CONTENT CHANGES
in 2021

123,000+

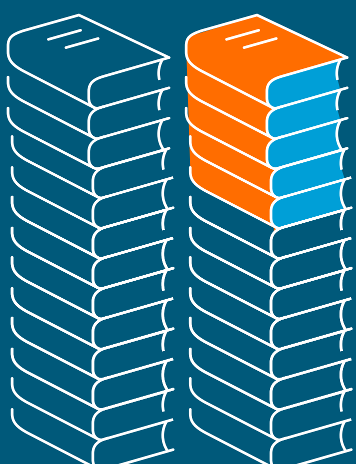
RATE AND TAXABILITY UPDATES
in the U.S. and Canada in 2021

131,000+

SAVE!

U.S. SALES TAX HOLIDAY RULE UPDATES
in 2021

SOURCE: Avalara

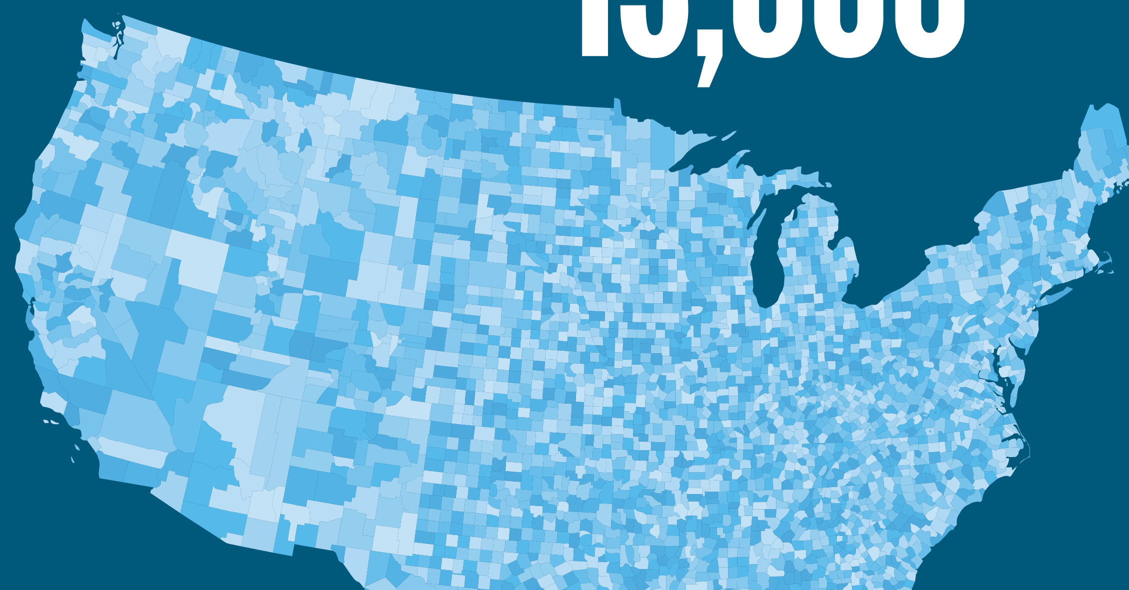


20.5%

YoY AVATAX CONTENT UPDATE GROWTH IN 2021

SALES AND USE TAX JURISDICTIONS IN THE U.S.

13,000+



SOURCE: Avalara

SALES TAX

Local tax conundrums: There's a lot to sort out

Whether, and to what extent, businesses should be responsible for collecting and remitting local sales and use taxes is a hot topic among state and local governments in several states.

TAKING THE HOME OUT OF HOME RULE

In most states, the state tax department administers state and local sales and use taxes. In **home-rule** states like Alabama, Alaska, Colorado, and Louisiana, many local governments levy and administer their own local sales and use taxes.

This may not be overly burdensome for brick-and-mortar businesses with an obligation to collect and remit sales tax in only one jurisdiction, even though they'd need to register with and remit returns to both the state and local taxing authorities.

However, for businesses required to collect and remit in multiple jurisdictions within a home-rule state (and likely also in multiple states), local registration, collection, and reporting requirements are a bear.

Understanding this, home-rule states are doing their best to simplify local sales and use tax compliance for remote sellers. It's not easy, and efforts to streamline sales tax compliance are progressing at different paces with different results.

150–400

HOURS

Time to register, input and extract requisite data, and file returns in 100 local jurisdictions

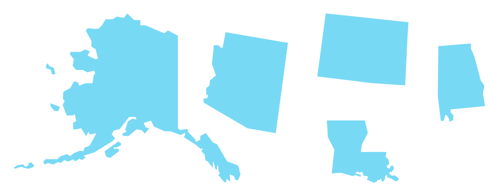
BY CONTRAST

10

HOURS

Time to prepare to file through a centralized state portal for reporting locally administered taxes

SOURCE: *STRI*



HOME-RULE AUTHORITY

Alabama, Alaska, Arizona, Colorado, and Louisiana allow localities to have total home rule – jurisdictions can establish their own sales and use tax rates and certain taxability rules.

SOURCE: *Avalara*

ALABAMA OFFERS A SINGLE RATE TO REMOTE SELLERS

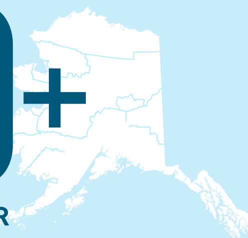
Alabama allows and encourages remote sellers to apply to collect, remit, and report a Simplified Sellers Use Tax (SSUT) on all sales into the state, rather than collect, remit, and report at the combined rate actually in effect at each location. “From a burden reduction perspective, it would be hard to conceive of a simpler system,” **notes the State Tax Research Institute**.

Yet although the Alabama Department of Revenue administers sales tax for many local taxing authorities, some local governments administer local taxes themselves. As a result, some businesses, including those with a physical presence in the state, could be required to register with and remit to multiple taxing authorities. In other words, some compliance complexity remains.

ALASKA CREATES SINGLE POINTS OF REMITTANCE FOR LOCAL SALES AND USE TAXES

Alaska has no state sales tax, but more than 100 city or borough governments levy local sales and use taxes.

After the Wayfair ruling, the local governments created the **Alaska Remote Seller Sales Tax Commission** to serve as a “simplified, single-level statewide administration” for participating communities that enforce economic nexus. The commission is operated by the Alaska Municipal League.



100+

ALASKA CITY OR BOROUGH GOVERNMENTS

levy local sales tax rates ranging from 1% to 7%

SOURCE: *Office of the State Assessor*

COLORADO MUNICIPALITIES URGE SOLIDARITY WITH THE STATE

Retailers required to collect Colorado state sales tax are also required to collect applicable state-administered local taxes. The Colorado Department of Revenue administers sales tax for many cities, most counties, and some special districts in the state. However, it doesn’t handle sales and use tax for close to 70 self-administered jurisdictions, some of which may require remote sellers to collect and remit local sales and use taxes.

“It’s often the case when local governments have a sales tax that retailers have to keep track of lots of local rates,” explains Scott Peterson. “In a few states retailers also must keep track of tax base differences between local jurisdictions and the state, but only in a very few states are retailers required to have a separate license per local government. The Colorado Legislature may not be able to change the rate and taxability differences, but they can and have eliminated the separate license requirement.”

Home-rule jurisdictions are prohibited from charging remote sellers a fee for local business licenses as of July 1, 2022, under **Senate Bill 32**. Effective July 1, 2023, self-administered local governments are prohibited from requiring remote businesses and sellers with “only incidental physical presence in those local taxing jurisdictions” to obtain a local license altogether. Until then, self-administered home-rule governments can require remote businesses to register to do business, collect applicable local taxes, and file returns.

The **Colorado Municipal League** (CML) encourages self-administering home-rule districts to either not tax remote sales or to adopt its model ordinance on economic nexus and join the state’s new single point of remittance portal (SUTS). It believes enforcing economic nexus at the local level without the single point of remittance would be **unconstitutionally burdensome**.

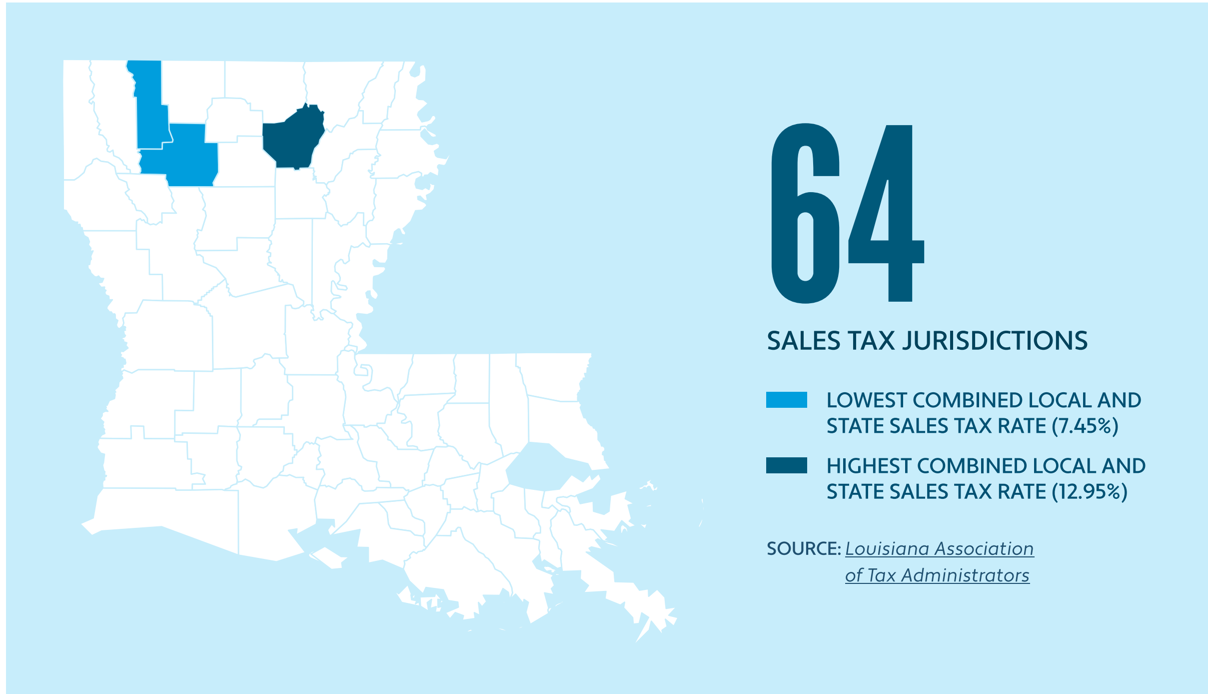
Many home-rule municipalities have adopted the CML ordinance and use the SUTS portal, but some, including **Grand Junction**, have not. Furthermore, self-administering jurisdictions still determine the tax rate, base, and exemptions, and Colorado localities can audit all vendors.

LOUISIANA WORKS TO SIMPLIFY COMPLIANCE FOR IN-STATE SELLERS

Recognizing the unnerving complexity of Louisiana's sales and use tax system, the Louisiana Legislature created the Louisiana Sales and Use Tax Commission for Remote Sellers to simplify sales and use tax compliance for remote sellers. And indeed, the commission has streamlined sales and use tax compliance for businesses with no physical presence in the state.

Yet businesses with a physical presence in Louisiana that sell and deliver to locations throughout the state are responsible for collecting and remitting local taxes to the parish where the sales were made. As there are 64 parishes in Louisiana, a business could potentially be required to register with and remit to 64 different local tax departments in addition to being obligated to file and remit state sales tax with the Louisiana Department of Revenue.

Lawmakers in the state are interested in creating a single commission for in-state businesses, as they've done for out-of-state businesses. In 2021, Louisianans voted **against** the creation of a streamlined sales and use tax commission, but the **State Tax Research Institute** expects the state to keep trying.



TEXAS: DON'T MESS WITH LOCAL SALES TAX REVENUE

There's an altogether different sort of a situation in Texas, which is not a home-rule state. It involves the **allocation** of local sales tax revenue.

Before Texas started taxing remote sales, Round Rock and several other cities in the state made quid pro quo deals with certain companies: If the companies set up shop in the city, creating jobs, etc., the city would kick back a portion of the sales tax revenue they generated. Win-win.

The Round Rock deal and others like it worked because Texas sourced orders to the location where the order was received (origin sourcing), not the delivery address (destination sourcing).

After Texas started taxing remote sales, the **Texas Comptroller** realized cities not party to such deals – the majority of Texas cities – are "losing revenue they need to provide services to the taxpayers who actually made the purchases." Comptroller Glenn Hegar explained most taxpayers expect local sales taxes to fund local services, like fixing potholes. Instead, local taxes are "shipped off to another community to fix their potholes."

So the Texas Comptroller updated the sourcing rules to clarify that sales tax is sourced either to the location where an internet order is fulfilled or to the delivery address, rather than to the location where the order was taken. This helps ensure the people who pay the sales tax will, for the most part, benefit from that sales tax revenue.

It also jeopardizes the sales tax collections of Round Rock and cities in similar situations. Round Rock alone stands to lose as much as **$30 million** in annual revenue because of the policy change. So Round Rock and the other cities are **suing the state**.

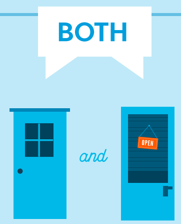
The battle over sourcing Texas sales tax continues. One of the **local tax sourcing changes** scheduled to take effect October 1, 2021, was **delayed** due to the lawsuit. And in August 2022, the **250th District Court** ruled the state failed to comply with certain procedural requirements and remanded the case to the Texas Comptroller for revision or readoption.

Texas certainly isn't the only state where local taxing districts and companies engage in sales tax sharing agreements. California lawmakers tried to put the kibosh on such deals in 2019, but the governor vetoed **the bill**.

"In 1999, nationally elected officials directed states to examine why sales tax was so complicated and to recommend solutions to that complexity," explains Scott Peterson. "Local taxes, and especially locally administered taxes, were number one on the list of complexities. After all these years, some of the complex local tax issues are being resolved."

DESTINATION SOURCING
Rates and rules are based on the location of the **buyer**

ORIGIN SOURCING
Rates and rules are based on the location of the **seller**



MIXED SOURCING
A mix of destination and origin sourcing

SOURCE: *Avalara*

Taxability changes

131,000+

U.S. sales tax holiday rule updates in 2021

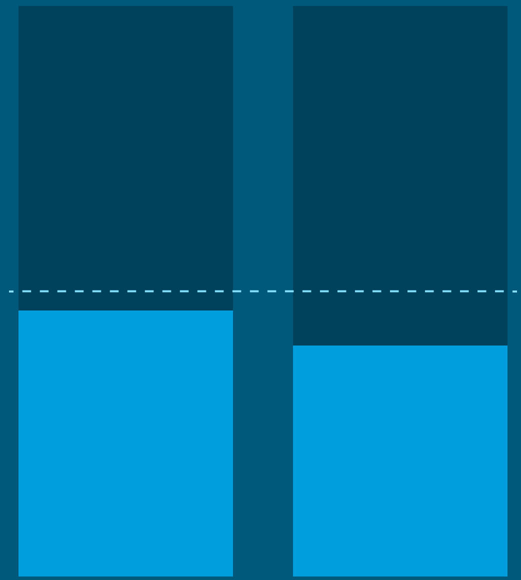
123,000+

rate and taxability updates in the U.S. and Canada in 2021

SOURCE: Avalara

48%

of respondents participating in a 2021 Avalara/Potentiate survey identified sales tax rate or rule errors as a top cause of audit penalties



41%

of respondents said audit penalties were triggered by missing exemption certificates

$54,480

The average penalty (if any) for small and midsize businesses as a result of undergoing an audit

38%

of audits resulted in penalties

$3,640

The average cost of managing the audit process

SOURCE: Survey conducted by Avalara and Potentiate

SALES TAX

Taxability changes: Tax off

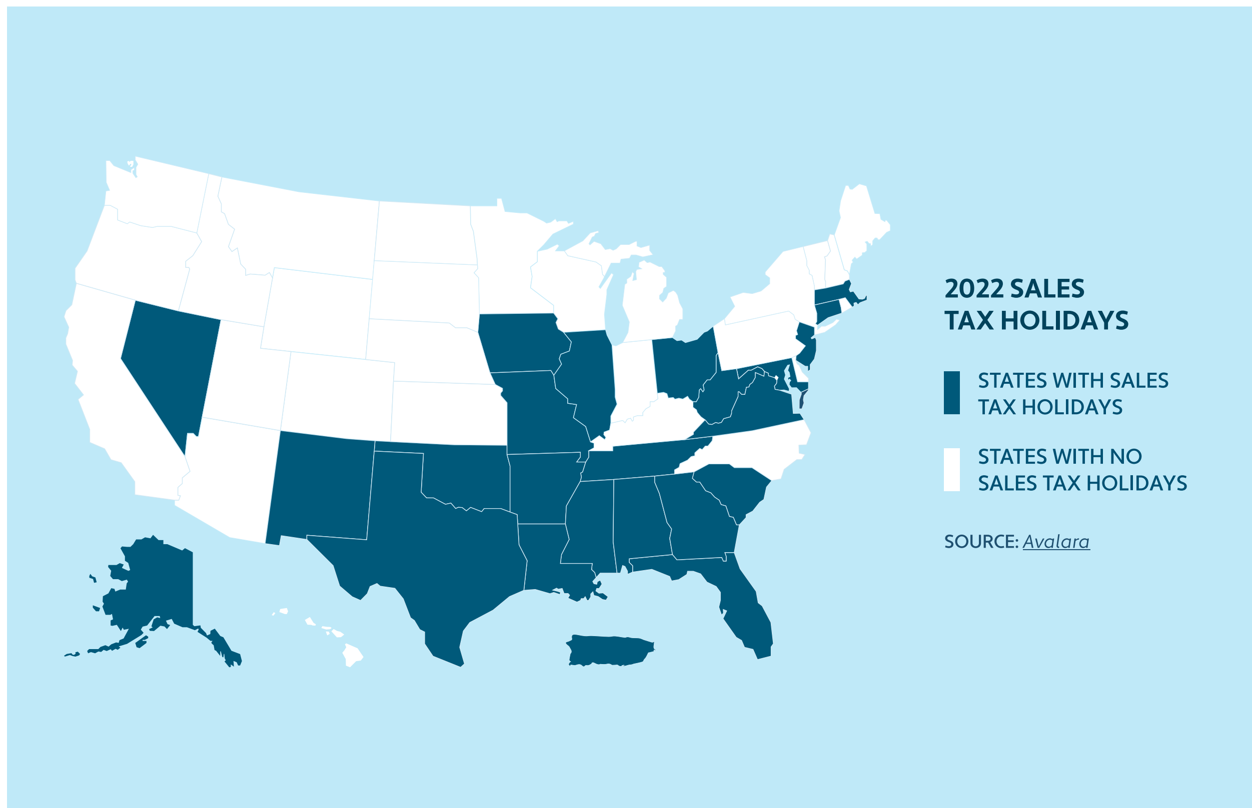
As always, states made numerous changes to their taxability laws in 2022. With pockets generally full, many states established new permanent or temporary exemptions.

NEW EXEMPTIONS AND REDUCED RATES

Diapers, feminine hygiene products, and food top the list of items for proposed sales and use tax exemptions most years. That stood true in 2022.

States that decided to permanently exempt or reduce the sales tax on diapers, menstrual care products, and/or food include:

- **Colorado**: Diapers and feminine hygiene products exempt as of January 1, 2023
- **Indiana**: Diapers exempt as of September 1, 2022
- **Iowa**: Diapers and feminine hygiene products exempt as of January 1, 2023



- **Kansas**: Tax on food and food ingredients gradually drops starting January 1, 2023, until fully exempt effective January 1, 2025
- **Louisiana**: Diapers and feminine hygiene products exempt as of July 1, 2022
- **Maryland**: Diapers, baby bottles, breast pumps, and more exempt as of July 1, 2022
- **New York**: Diapers, already exempt from state sales tax, exempt from local sales tax effective December 1, 2022
- **Virginia**: Sales and use tax rate on food and personal hygiene items (including diapers) drops from 2.5% to 1% effective January 1, 2023

Ohio, **Oklahoma**, **Michigan**, **Washington**, and several other states and municipalities also considered exempting diapers, feminine hygiene products, and/or groceries. With inflation making it harder for low-income families to make ends meet, such exemptions may get more traction during 2023 legislative sessions.

NEW SALES TAX HOLIDAYS AND OTHER TEMPORARY EXEMPTIONS

Temporary exemptions, also called sales tax holidays or tax-free weekends, were also quite popular in 2022.

States with **new or extended sales tax holidays** include:

- **Connecticut**: Gas tax holiday April through June 2022
- **Florida**: Nine overlapping sales tax holidays or temporary exemptions plus a motor fuel tax exemption enacted in 2022; some extend into 2023 and 2024
- **Georgia**: Gas tax holiday March 18 through December 11, 2022
- **Illinois**: Sales and use tax on groceries suspended from July 1, 2022, through June 30, 2023
- **Maryland**: Gas tax holiday March 18 through April 16, 2022
- **New Jersey**: Back-to-school sales tax holiday August 27 through September 5, 2022
- **New York**: Gas tax holiday June 1 through December 31, 2022
- **Tennessee**: Food and food ingredients exempt from August 1 through August 31, 2022
- **Ketchikan Gateway Borough, Alaska**: A one-day sales tax holiday for local sales tax **October 1, 2022**

In other exemption news:

California is providing a sales and use tax exemption for qualified electric and hybrid vehicles between January 1, 2023, and January 1, 2028; the exemption is part of the **Clean Cars 4 All** program, which was created to increase use of zero-emission and hybrid vehicles in low-income and disadvantaged communities.

Maryland clarified that certain digital products are exempt from sales tax as of July 1, 2022 (after broadening tax to certain digital products in 2021).

New York extended its exemption for certain candy, fruit drinks, soft drinks, and bottled water sold from vending machines. Originally set to expire in 2022, the exemption will now last through May 31, 2023.

SALES TAX

Taxability changes: Tax on

There wasn't much talk of expanding state sales tax bases in 2022, perhaps due to generally strong fiscal health and ongoing uncertainty related to the COVID-19 pandemic. However, some states are broadening sales tax, and others are exploring the idea.

One of the most startling sales tax events took effect in Colorado on July 1, 2022. OK, the Colorado Retail Delivery Fee is technically a fee, not a tax, but it looks and acts like a tax. The 27-cent fee applies to taxable sales delivered by motor vehicle in the state. It's not subject to state sales tax but is subject to local sales tax in some home-rule jurisdictions. **Here's what you need to know**.

Kentucky sales tax applies to approximately **35 new services** starting January 1, 2023. Some of the newly taxable services could be categorized as essential, such as certain labor and repair services, household moving services, and website hosting services. Others may be considered nonessential, including body modification services and certain cosmetic surgery services.

Nebraska lawmakers introduced a **measure** to impose sales tax on "every person engaged in the business of providing any service," with the exception of services rendered by an employee to their employer. It didn't get far.

Kansas considered taxing digital property and subscription services, but the **measure** died.

As previously noted, Minnesota, Pennsylvania, Puerto Rico, Washington, and Wisconsin have all clarified (or are working to clarify) that sales tax applies to non-fungible tokens (NFTs). As the **Institute on Taxation and Economic Policy** notes, this will be "interesting and challenging for tax administrators."

SALES TAX ON
35
NEW SERVICES

KENTUCKY EXTENDS SALES TAX TO 35 NEW SERVICES AS OF JANUARY 1, 2023, INCLUDING:

- Body modification services, including branding, ear pointing, piercing, scarification, tattooing
- Executive employee recruitment services
- Household moving services
- Interior decorating and design services
- Marketing services
- Massage services, except when medically necessary
- Personal fitness training services
- Residential and nonresidential security system monitoring services
- Website design and development services

SOURCE: *Avalara*

SALES TAX

Other issues likely to affect sales tax compliance in 2023

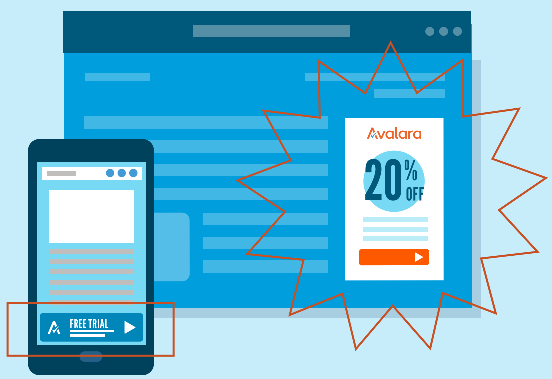
MARKETPLACE AUDITS

As there's still a lot of confusion in the retail industry around what makes a marketplace, many businesses aren't sure whether they're subject to state marketplace facilitator laws. This issue could come to a head if states increase audit activity in response to a cooling economy and declining tax collections.

DIGITAL SERVICES TAXES

There was a decisive move in the ongoing battle over **Maryland's controversial digital advertising tax** in October 2022. Judge Alison Asti of the Anne Arundel County Circuit Court declared the state's digital advertising gross revenues tax law unconstitutional.

Maryland Comptroller Peter Franchot is ready to move on. "I firmly believe that instead of continuing to expend public resources to defend a law that was constitutionally questionable at the time of enactment," he said in a statement, "the incoming governor and the incoming legislature should instead be given the opportunity to revisit this law."



DIGITAL ADVERTISING SERVICES

Advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services

SOURCE: *Casetext*

He added that while the law was well-intentioned, "its constitutionality – coupled with the tax's residual impact on small businesses that utilize digital advertising services" gave him pause.

Nevertheless, on November 21, 2022, Attorney General Brian Frosh filed a notice to **appeal the decision**.

Scott Peterson also finds the state's law to be questionable, noting that it picked winners and losers by limiting the tax only to digital advertising. "State policies may sometimes appear to discriminate against certain business activities, but states have to be able to prove that doing so is a legitimate state interest. Even without bringing in the federal Internet Tax Freedom Act, Maryland struggled to justify treating digital advertising differently from other advertising."

Peterson adds that states often tax the print side of advertising because it's tangible and easy to source to a location. "That's a crucial requirement of a sales tax. Advertising is rarely subject to a transaction tax by the states because the industry is so broad."

Digital services tax (DST) was first proposed by the European Commission in 2018, and several EU member states now tax digital services. However, the European Commission generally considers DSTs to be a Band-Aid, not a permanent fix. According to a report issued by the **State Tax Research Institute**, DSTs will eventually be discarded as member states switch to economic nexus and market-based sourcing rules.

DIGITAL NOMADS

There are likely to be more developments related to digital nomads and the **remote workforce**. Though many people are returning to the office, either voluntarily or as required by employers, many continue to work remotely at least part of the time. Even the **IRS** is embracing "telework and workplace flexibility." The agency may launch a pilot program in 2023 to "compare the productivity and efficiency of remote and hybrid IRS employees against peers who have already returned to the office." If the IRS can do it, surely other businesses can too.

Employees working remotely from other states can establish nexus for their employers, exposing them to income tax, sales tax, and other tax obligations. Having people on the payroll in other countries can create even more complicated tax issues, although some countries are encouraging digital nomads to set up shop by waiving certain tax requirements, at least temporarily.

REAL-TIME COMPLIANCE

U.S. companies that do business abroad will need to adapt to **real-time compliance** requirements. "Electronic invoicing and digital reporting is the clear direction of travel for tax authorities within Europe," says Alex Baulf, senior director of Global Indirect Tax at Avalara. He notes that France will mandate e-invoicing starting July 1, 2024. Though only large businesses will be required to issue electronic invoices on that date, every business will need to be able to receive them. "This is a huge, huge change."

Meanwhile, some states in the U.S. are actually moving away from real-time compliance. Scott Peterson believes states don't want to pile more expenses on businesses right now, and transitioning to electronic invoices would be costly. Yet electronic invoices and real-time compliance **mandates** will likely surface in the U.S. eventually. Since there's no central taxing authority for sales tax in this country, states, territories, and local governments will need to work out their own standards. "Don't expect one simple, seamless national solution," says Liz Armbruester.

The **Business Payments Coalition** ran an e-invoicing pilot program through 2022 and plans to establish an operational **B2B invoice exchange framework for the U.S. market** in 2023. It will be interesting to watch it unfold.

Discover more tax changes impacting businesses in our industry sections.

IRS CONSIDERS EXPANDING REMOTE WORK

1,000+

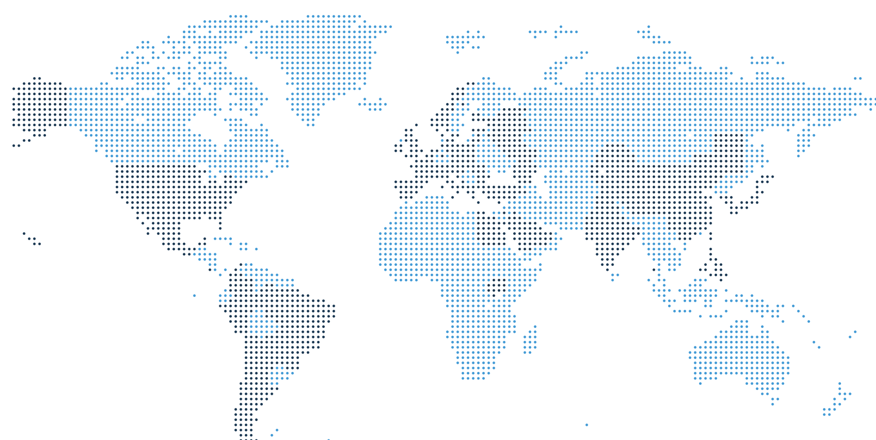
EMPLOYEES TO 100% TELEWORK IN PILOT PROGRAM

SOURCE: *Federal News Network*

COUNTRIES WITH E-INVOICING REQUIREMENTS

- Have e-invoicing requirements
- Does not have e-invoicing requirements

SOURCE: *Avalara*



Retail

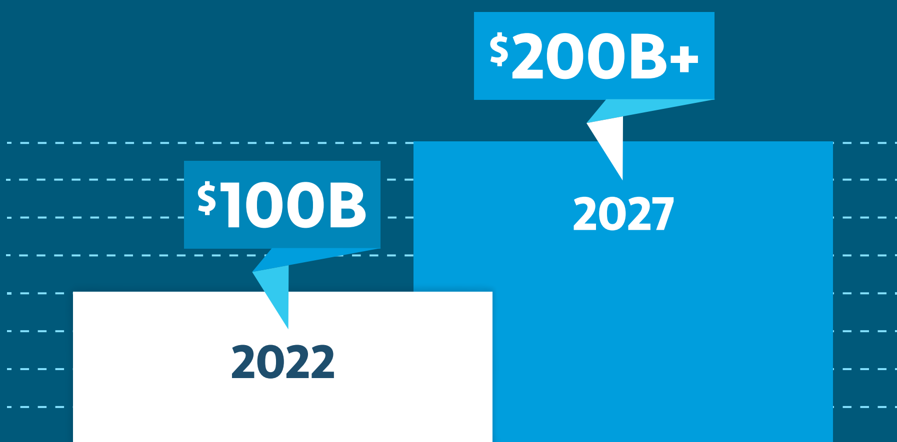
Inflation, retail shrink, and cyberattacks are just a few of the challenges facing retail businesses as we move into 2023. On top of these very real issues that make day-to-day operations difficult at best, retailers must navigate a complex web of changing sales and use tax requirements.

Retail

24%

of shoppers surveyed say they'll abandon their carts if checkout is too complicated

SOURCE: *InternetRetailing*



Buy online, pickup in store (BOPIS) transactions will likely reach $100 billion in 2022 and more than $200 billion by 2027

SOURCE: *Retail Dive*

59%

56%

Third-party marketplace sales are expected to account for 59% of all global ecommerce by 2027, up from 56% in 2022

SOURCE: *InternetRetailing*

$1.3T+ IN SALES

38% OF RETAIL SALES GROWTH

By 2027, third-party marketplace sales will be the largest and fastest-growing retail channel globally, adding more than $1.3 trillion in sales by 2027 and accounting for 38% of all global retail sales growth

SOURCE: *InternetRetailing*

RETAIL

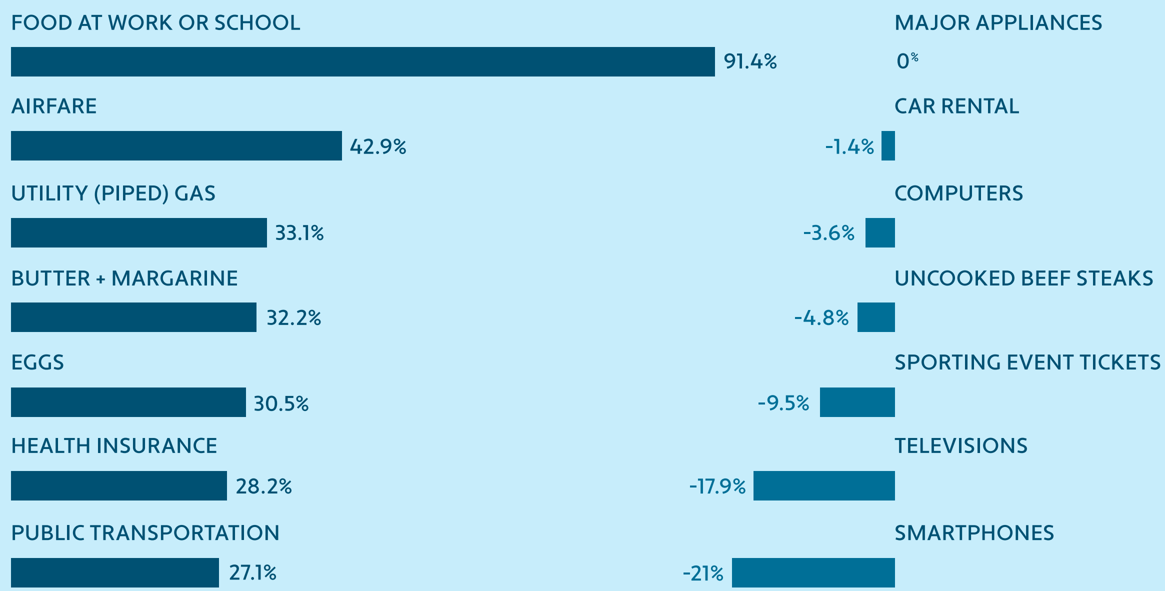
The (un)avoidable impacts of inflation

Since **consumer prices** jumped 0.4% between August and September 2022, and inflation rose 8.2% year over year, retail spending in **September 2022** was understandably flat. Forced to spend more on essentials, consumers bought fewer electronics, furniture, and other extras.

Maybe folks were just saving up for the holidays. In a survey of 2,000 consumers conducted in late September 2022 by the **National Retail Federation**, 43% of respondents said they don't earn enough to cover the costs of gifts and other holiday items, but 62% said it's important to spend on holiday gifts and celebrations.

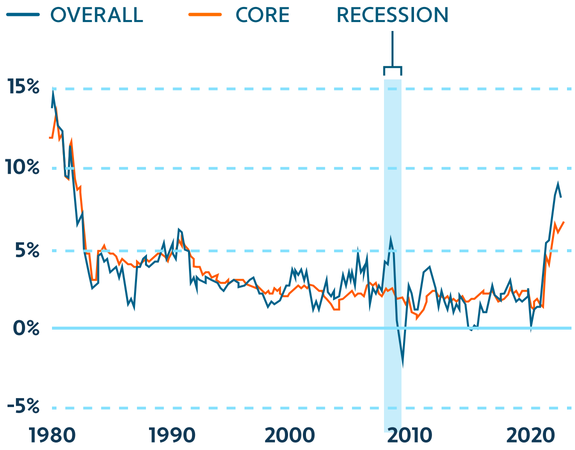
Whatever the case, retailers are feeling the effects of inflation: Shipping and storage cost more; consumers are buying less. So, retailers need to find ways to get the most out of each dollar.

INFLATION IN SEPTEMBER 2022



SOURCE: *CNBC*

CONSUMER-PRICE INDEX,
CHANGE FROM A YEAR EARLIER



SOURCE: *WSJ*

TECHNOLOGY AND TOOLS CAN HELP EASE THE PAIN OF INFLATION

A solid inventory management system helps retailers ensure inventory is where it needs to be, something that's become harder to accomplish with the troubled supply chain and the rise of BOPIS (click-and-collect).

Streamlining sales tax collection, remittance, and reporting can save time and money, especially for businesses with a sales tax obligation in multiple states. A 2022 survey by Avalara and Potentiate found that retail businesses with less than 500 employees typically spend an average of 209 hours per month on tax management activities and approximately $24,000 per month on tax compliance activities.

RETAIL BUSINESSES WITH LESS THAN 500 EMPLOYEES

209 HRS

Average time spent on tax management activities

$24,000

Small business respondents in the retail industry report spending the most across all categories on tax compliance activities at approximately $24,000 per month

22 HRS

Estimated time spent per month identifying state sales tax obligations and filing requirements

$2,562

Estimated spending per month identifying state sales tax obligations and filing requirements

42.2 HRS

Estimated time spent per month on tax rates and calculations

$4,861

Estimated spending per month on tax rates and calculations

57 HRS

Estimated time spent per month on tax returns

$6,477

Estimated spending per month on tax returns

40.1 HRS

Estimated time spent per month on exemption certificate management

$4,606

Estimated spending per month on exemption certificate management

48 HRS

Estimated time spent per month on consumer use tax

$5,526

Estimated spending per month on consumer use tax

SOURCE: Avalara and Potentiate

RETAIL

Retail shrink and cyberattacks

Another issue retailers can't overlook is security. As anyone with a phone or email account well knows, phishing is out of control.

Retail shrink is also real. According to a 2022 **Retail Security Survey**, retailers are seeing more ecommerce, in-store, and omnichannel fraud. Many respondents also report an increase in organized retail crime and violence. To fight back, retailers are installing autonomous security robots, license plate recognition systems, and artificial intelligence–based video analytics at point-of-sale and self-checkout stations.

Retailers may have a harder time combatting cargo theft, which often happens when cargo is at rest while in transit. About 47% of respondents said they'd experienced cargo theft when shipments were moving from distribution centers to stores.

So there's that. And though having inventory stolen is bad, having customers' personal and financial information stolen may be worse.

Cybersecurity is a real and growing issue, and about **24%** of cyberattacks in 2020 targeted retailers – more than any other industry.

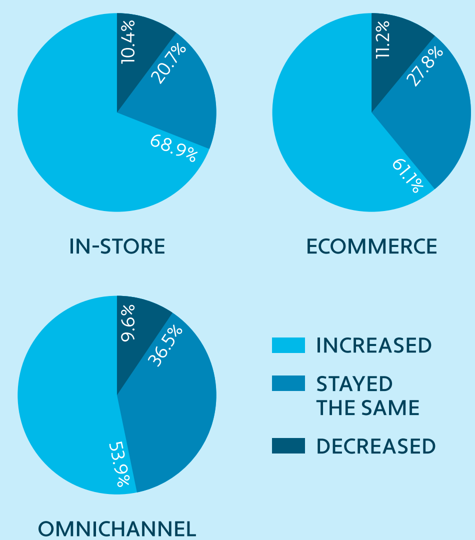
As if inflation and security crises aren't enough, retailers also have to deal with product taxability changes.

24%

of cyberattacks in 2020 targeted retailers, more than any other industry

SOURCE: *Threat Intelligence*

2020–2021 CHANGES AMONG DIFFERENT TYPES OF FRAUD



SOURCE: *NRF and LPRC*

Taxability changes happen

Tools and technology can help retailers manage taxability changes, which are abundant. In 2021, there were more than 131,000 updates to U.S. sales tax holiday rules, which were in addition to the more than 123,000 sales tax rate and taxability changes that occurred in the U.S. and Canada that year.

2022 brought new sales tax holidays in several states, including **Florida** and **New Jersey**.

Product taxability changes in 2023 include a new exemption for diapers and feminine hygiene products in **Colorado**, a reduced rate for food and personal hygiene items in **Virginia**, and a decrease in the tax on food and food ingredients in **Kansas**. And these are just the tip of the proverbial iceberg. You can find more on taxability changes in the **sales tax section**.

According to a 2022 survey, small retailers spend about 42.2 hours per month on tax rates and calculations. Retail employees face numerous challenges finding and responding to product taxability changes manually. It's far more practical to get tax answers from **Avalara Tax Research**. **Automating sales tax** collection and remittance can also help.

Of course, retailers that sell only through marketplaces are absolved of much of the burden of sales tax compliance (if not all).

NEW JERSEY BACK-TO-SCHOOL SALES TAX HOLIDAY

Tax-exempt supplies and equipment include:

- SCHOOL SUPPLIES
- SCHOOL ART SUPPLIES
- SCHOOL INSTRUCTIONAL MATERIALS
- COMPUTERS
- SCHOOL COMPUTER SUPPLIES

SOURCE: *NJ.GOV*

RETAIL

The evolution of the marketplace

The number of third-party marketplaces operating globally has grown by more than **500%** since 2007. Marketplaces today are increasingly tailored to specific products, services, or clienteles. There are marketplaces for groceries, parking spots, restaurant food, teaching materials, used bicycles, wine, and much, much more. If you can name it, there's probably a marketplace for it.

"Marketplaces continue to grow and disrupt the economy," says George Trantas, senior director of Global Marketplaces at Avalara. "They're changing the way we behave." That goes for retailers just as much as consumers.

RETAILERS ARE BREAKING OPEN THE MARKETPLACE BOX

A growing number of large retailers, including **REI, Target, and Urban Outfitters**, now operate a marketplace in addition to their direct ecommerce sites. They're onto something. Third-party marketplace sales are expected to account for **59%** of all global ecommerce by 2027, and 38% of global retail sales growth. Retailers understandably want a piece of that action.

But while operating a marketplace promises rewards, there are risks as well.

RISKS VS. REWARDS

Two of the biggest challenges for retailers expanding into the marketplace facilitator space are:

1. Mitigating the complexity of marketplace facilitator laws
2. Providing a seamless customer experience

1. MITIGATING THE COMPLEXITY OF MARKETPLACE FACILITATOR LAWS

Every state with a general sales tax has a marketplace facilitator law that shifts the obligation to collect and remit sales tax from the seller to the marketplace facilitating the sale. A retailer that becomes a marketplace therefore also becomes responsible for collecting, remitting, and reporting the tax due on third-party sales.

THIRD-PARTY SALES GROWTH PROJECTIONS FOR 2022 TO 2027

11% CAGR for edible groceries

10.6% CAGR for household and pet care

10.5% CAGR for office supplies

SOURCE: *InternetRetailing*

It’s a big job.

Retailers taking on the responsibility of a marketplace need to determine where they have nexus, a connection that establishes a sales tax obligation. The two most common ways to create nexus are 1) physical presence in a state, including third-party inventory held in a marketplace facility and 2) sales activity in a state (economic nexus).

Marketplaces with many fulfillment centers often have both physical presence and economic nexus, as do the large retailers that increasingly are becoming marketplaces.

Learn more about economic nexus and marketplace facilitator laws.

2. PROVIDING A SEAMLESS CUSTOMER EXPERIENCE

Whether buying directly from a retailer or from a third party, consumers want a seamless experience. This can be challenging for direct sellers to provide. For retailers operating a new marketplace, it can be even more complex.

Consumers today expect to be able to purchase, receive, and return items wherever is most convenient for them. They’re accustomed to the buy online, pickup in store (BOPIS) or click-and-collect options that many retailers now offer. However, retailers that operate a marketplace may not be able to provide that service for third-party sales.

The same is true on the returns side.

The new curated digital marketplace launched by Macy’s in September of 2022 gives customers access to more than 20 product categories and **400 new brands**, and promises a “cohesive and integrated Macy’s digital experience.” However, Macy’s brick-and-mortar stores cannot accept returns or exchanges of items purchased from a third-party seller; Macy’s marketplace sales have to be **returned** directly to the actual seller within 30 days of purchase.

Managing expectations is key. Most consumers understand that their every wish can’t always be met. What rubs them wrong is false promises or unclear policies.

That said, consumers typically expect their shopping experiences to be seamless.

RETAIL

Evolving role of the retail storefront

Many consumers take the time to visit brick-and-mortar stores precisely so they can see and touch products – one reason digital natives like Amazon and Warby Parker opened up physical stores. It's in a retailer's best interest to keep a wide variety of products in stock.

At the same time, most consumers understand that store shelves can't fully replicate the endless online aisle, especially given the world's well-publicized supply chain difficulties. So consumers are increasingly comfortable with placing an online order from a store.

This can be done two ways: via a connected sales associate or from the consumer's mobile device. Either way, the experience for consumers should be painless at worst, pleasurable at best. In-store sales systems (both at the register or on handheld mobile devices) should quickly identify and access shipping and billing information for loyal customers. Mobile sites should feel similar to the in-store and online experience, be easy to navigate, and integrate with sales systems.

Consistency across platforms is essential for sales tax compliance as well: According to a survey of more than 17,000 customers from 29 countries, **85%** of shoppers expect interactions across departments to be consistent, if not seamless. For that to happen, in-store sales systems need to be able to apply the sales tax rate in effect at the point of sale, whether the sale is completed in the store or upon delivery. In most parts of the country, the sales tax rate for deliveries is based on the location where the consumer takes possession of the goods or services purchased.

Making sure critical systems have offline capabilities is also important, because spotty service and internet outages happen. Point-of-sale systems with an **offline mode** allow businesses to accept credit card transactions even while offline.

KEY INSIGHTS FROM NEARLY 17,000 CUSTOMERS WORLDWIDE

85% expect consistent interactions across departments

68% trust companies to tell the truth

56% expect all offers to be personalized

SOURCE: *Salesforce*

Other issues likely to affect the retail industry in 2023

ONGOING SUPPLY CHAIN KINKS

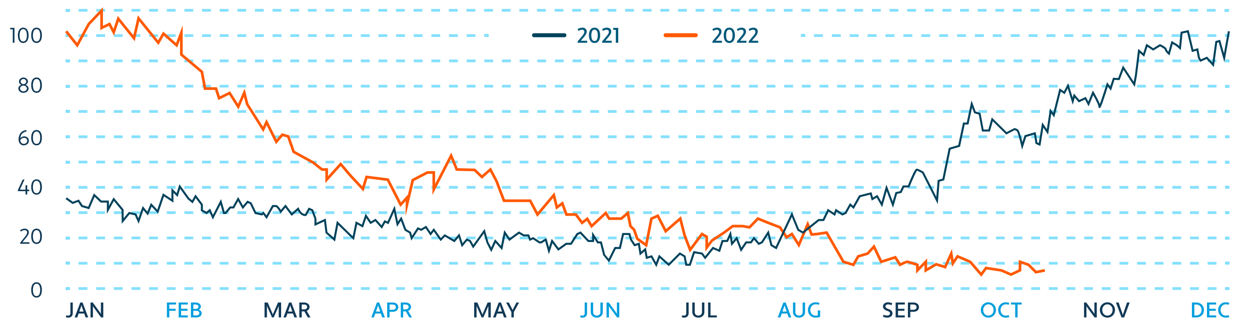
Before the COVID-19 pandemic threw a wrench in the supply chain, average queues of ships waiting to unload at ports were in the single digits. As of November 23, 2022, there were **59 container ships** waiting for an open North American dock. While an improvement over the peak of the roughly **150** ships that were waiting to dock in January 2022 and again in July 2022, it shows the supply chain is still in deep water.

NEW EMPHASIS IN SUSTAINABILITY

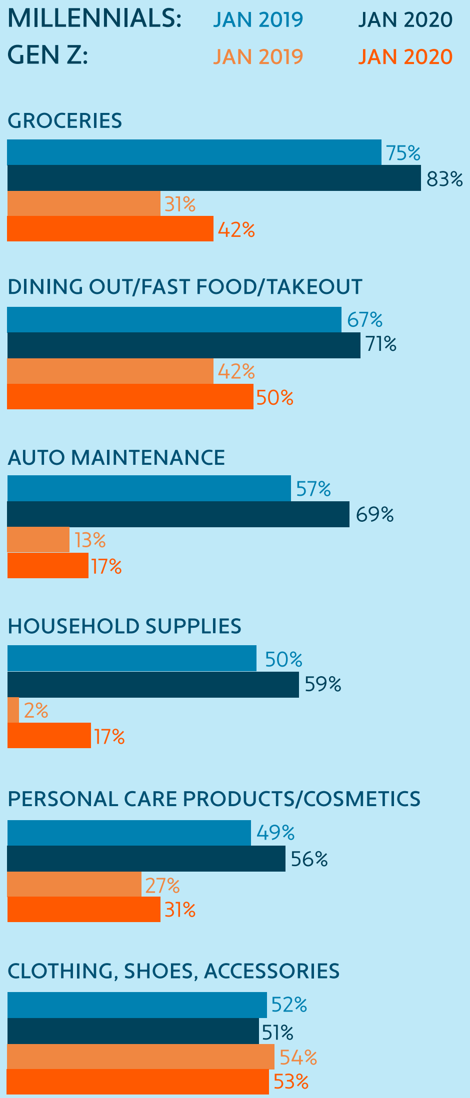
Millennials and Gen Z have a combined spending power somewhere between **$740 billion** and **$3 trillion**, and they value sustainability. Retailers that keep this in mind when sourcing, packaging, and delivering products may win their respect (and dollars), and there can be tax benefits too. **Colorado** has a fee on taxable goods delivered by motor vehicle. Numerous countries, including Italy, Spain, and the U.K., already ban or tax certain plastic packaging, or plan to.

CONTAINER SHIPS WAITING OFF LOS ANGELES/LONG BEACH: 2021 VS. 2022

SOURCE: *FreightWaves*



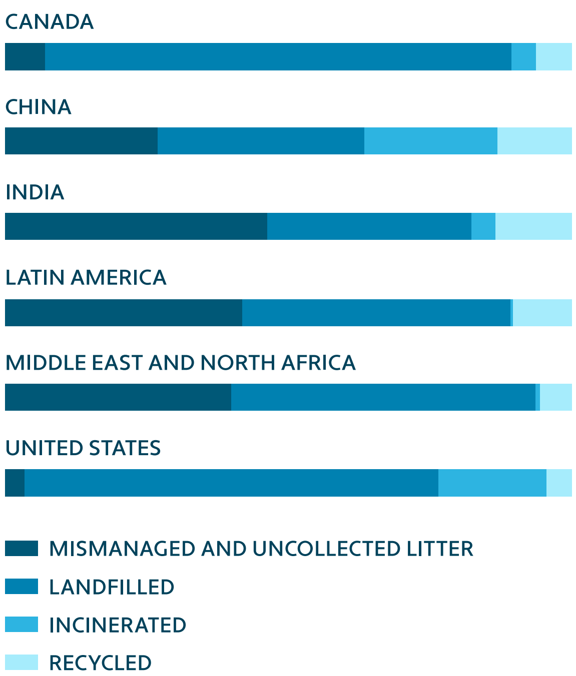
MILLENNIALS' AND GEN Z'S TOP MONTHLY EXPENDITURES



SOURCE: *YPulse*

"Numerous countries, including Italy, Spain, and the U.K., already ban or tax certain plastic packaging, or plan to."

SHARE OF PLASTICS TREATED BY WASTE MANAGEMENT CATEGORY, AFTER DISPOSAL OF RECYCLING RESIDUES AND COLLECTED LITTER, 2019



SOURCE: OECD

NEW PRIVACY LAWS

California consumers will have more control over the personal information businesses collect as of January 1, 2023, when the state's **expanded privacy rights** law takes effect. Retailers will have to adjust their business practices accordingly.

RETAIL

Stay up to date

Find new insights and statistics in our retail industry update:

AVALARA.COM

UP NEXT: SOFTWARE

Software

As more businesses come to rely on cloud-based solutions, the software industry is uniquely positioned to benefit from the digital transformation. But as global sales increase, so do new and evermore complex tax compliance obligations: Just look at how much time your finance and accounting departments devote to tax compliance.

Software

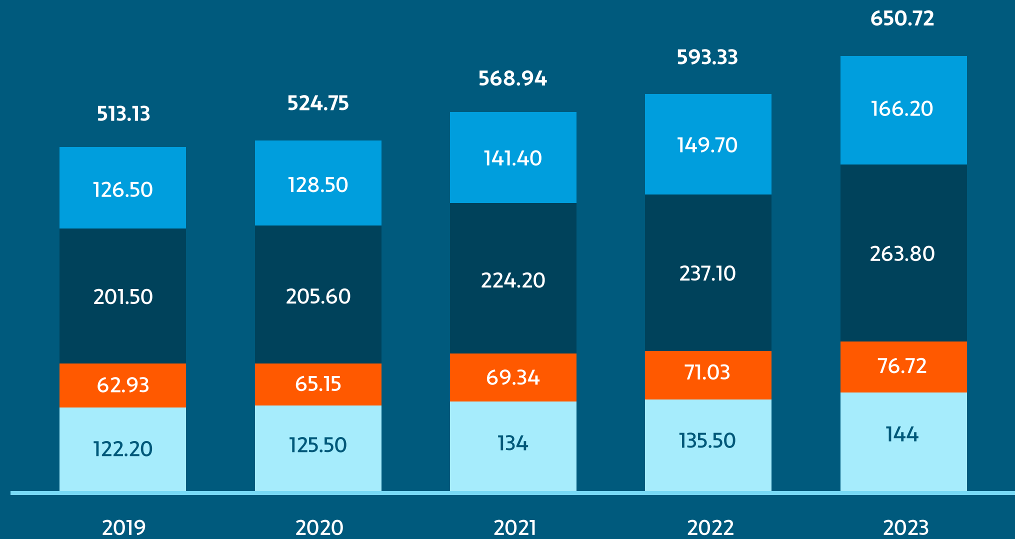
YEARLY GLOBAL SOFTWARE REVENUE

$593B

Revenue in the global software market is expected to exceed $593 billion in 2022

SOURCE: *Statista*

- Application Development Software
- Enterprise Software
- Productivity Software
- System Infrastructure Software



COST OF IDENTIFYING STATE SALES TAX OBLIGATIONS AND FILING REQUIREMENTS FOR SMALL SOFTWARE BUSINESSES

$1,015 PER MONTH

SMALL SOFTWARE BUSINESS ESTIMATES OF COST OF MANUAL COMPLIANCE PER MONTH

TAX RETURNS **$3,275**

CONSUMER USE TAX **$2,603**

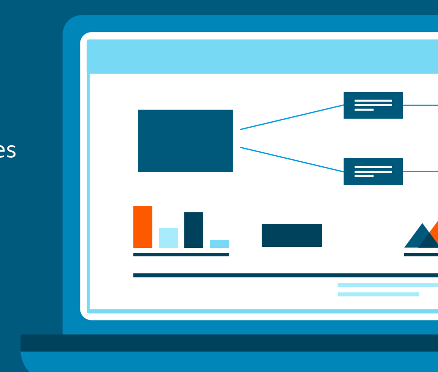
TAX RATES AND CALCULATIONS **$2,173**

EXEMPTION CERTIFICATE MANAGEMENT **$2,047**

TAX MANAGEMENT ACTIVITIES

121 HRS

Small software businesses spend an average of 121 hours per month on tax management activities



SOURCE: Survey conducted by Avalara and Potentiate

SOFTWARE

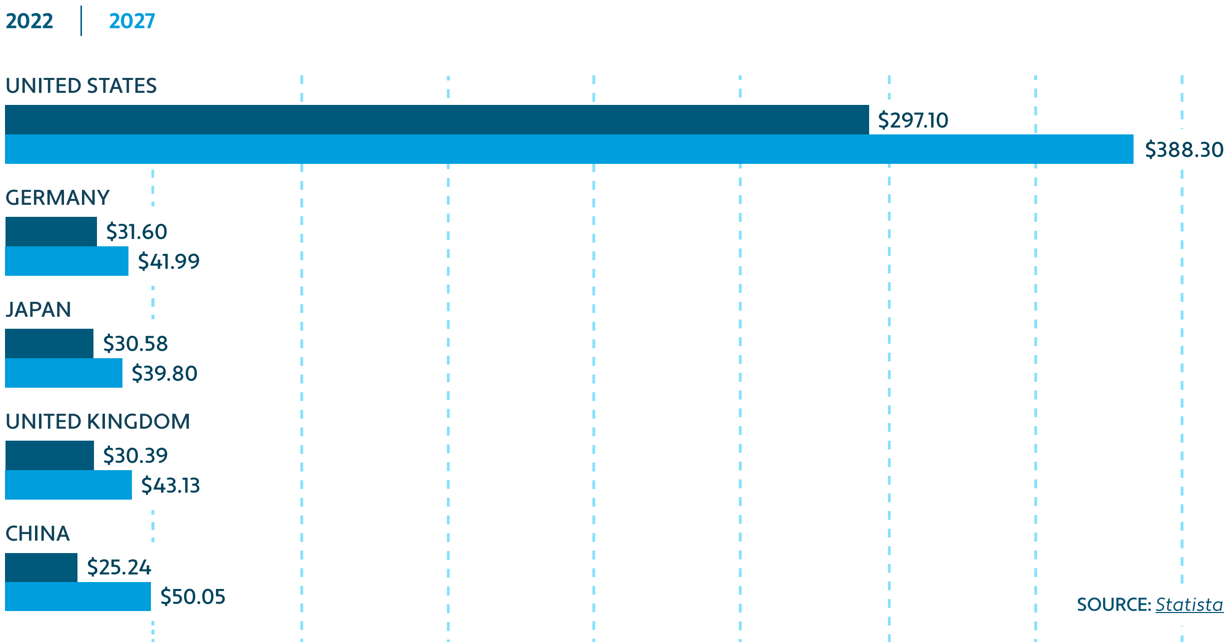
As technology becomes more ubiquitous, so does tax pain

Software and software services have become virtually indispensable to all but the most determined technophobes. Day after day, businesses across all industries rely on software solutions to keep employees connected and accomplish a wide range of essential tasks. Those that didn't do so before the pandemic, including many government tax departments, probably do now.

Business models such as infrastructure as a service (IaaS), platform as a service (PaaS), and software as a service (SaaS) can greatly streamline workflows and processes, especially in the age of remote work. And with the uncertain economic outlook, tools that allow us to do more with fewer resources are critical. Thus, worldwide software revenue is expected to rise at an annual growth rate of 6.5% between 2022 and 2027, and reach a market volume of $812.9 billion by 2027.

Yet IaaS, PaaS, and SaaS products and services can also complicate sales and use tax compliance for the businesses that buy, sell, and use them.

TOP 5 COUNTRIES IN SOFTWARE REVENUE (BILLION USD)



SOURCE: *Statista*

SOFTWARE

How do I tax thee, software? Let me count the ways.

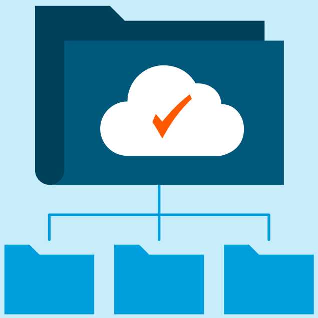
States tend to put software and software services into broad categories: Canned (ready-made) software may be treated one way for tax purposes, custom software another. Software sold on its own may be taxed differently than software sold in conjunction with a service. A business must understand these distinctions in order to get sales tax right.

But tax laws have trouble keeping up with technology, so it's often unclear how new products or services should be treated. States are constantly updating their policies via legislation or regulation and rule changes. It can often be difficult to determine the latest tax policies in a state, much less how they may apply to one company's unique set of circumstances.

For example:

The Mississippi Department of Revenue is interested in **taxing sales of cloud computing services**, but it's waiting to act until a task force created under **Senate Bill 2831** can weigh in on the matter. The **government task force** and many businesses are calling for a full sales and use tax exemption for B2B inputs whether the products and services are delivered, downloaded, or remotely accessed in Mississippi. A senior state director at the National Federation of Independent Business believes taxing these sorts of sales would "**create a compliance nightmare**," but as Avalara VP of Government Relations Scott Peterson notes, other states have the same tax policy Mississippi is considering.

The **Supreme Court of Ohio** noted that the taxability of a bundled transaction is determined by "its true object." That is, sales tax applies to computer-related services "only when the consumer's true object is to obtain the work performed by computer systems ... rather than to obtain personal and professional services that are coupled with the work that is performed by computer services."



CLOUD COMPUTING

describes the delivery of computing resources, including software applications, development tools, storage, and servers over the internet. The term includes the software as a service model (SaaS), platform as a service model (PaaS), infrastructure as a service model (IaaS), and similar service models.

SOURCE: *Mississippi Secretary of State*

A circuit court in **Virginia** determined a telecommunications equipment company was entitled to a sales tax refund for sales of software, equipment, and related services to a telecommunications company. Though the Virginia Tax Commissioner insisted the software was taxable, the court found the sales qualified for Virginia's exemption for electronically delivered software.

A similar situation arose in Mississippi. Although the Mississippi Department of Revenue insisted **digital images** sold by a wedding photographer were taxable, the Supreme Court of Mississippi determined they were not. According to the state **Supreme Court**, Mississippi sales tax doesn't apply to digital photography services or to the copyrights to digital images.

Because of the very nature of software and software services, it's difficult for businesses in the software industry to determine whether they're obligated to collect and how much sales tax to charge. And it often takes years for a taxing authority and business to resolve conflicts over tax matters.

Sourcing, economic nexus, and marketplace facilitator laws further complicate sales tax compliance for businesses in the software industry.

SOURCING RULES ON SOFTWARE ARE A NIGHTMARE

Sales tax rates and rules are usually governed by the location where a tangible good is delivered or a service is received. With digital goods and services, the sale is typically sourced to the location where the goods were first used or services first experienced.

Unfortunately, that location can be hard to determine when what's sold lives in the cloud and is used by lots of people for lots of purposes in lots of locations.

It's hard enough for B2C transactions: How does one source an ebook sold to a consumer who lives in Seattle and buys/downloads the ebook while in an airport in Chicago? Does the fact that the ebook is first opened somewhere over Indiana or Ohio matter? Or that the sequel was purchased and downloaded from a hotel in New York?

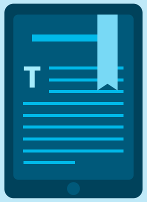
Now think about a business that buys infrastructure, platforms, or software as a service from their headquarters in Nevada. They have offices in California, Texas, and Massachusetts, and many employees working remotely from many states – when they're not taking a **workcation at various destinations worldwide**.

Since a physical address isn't needed to deliver software products and services, many software companies may only collect a customer's billing address or just their ZIP code. But that might not be the location where the purchased digital goods were first used, or where possession was transferred from the seller to the buyer.

And it's not entirely clear that the place of first use or possession suffices, from a sales tax perspective. If 50 employees based in State X regularly use IaaS, PaaS, or SaaS, State X may want to tax the monthly

DIGITAL AUDIO-VISUAL WORKS:
a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any

DIGITAL AUDIO WORKS:
works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones



DIGITAL BOOKS:
works that are generally recognized in the ordinary and usual sense as "books"

SOURCE: *Justia*

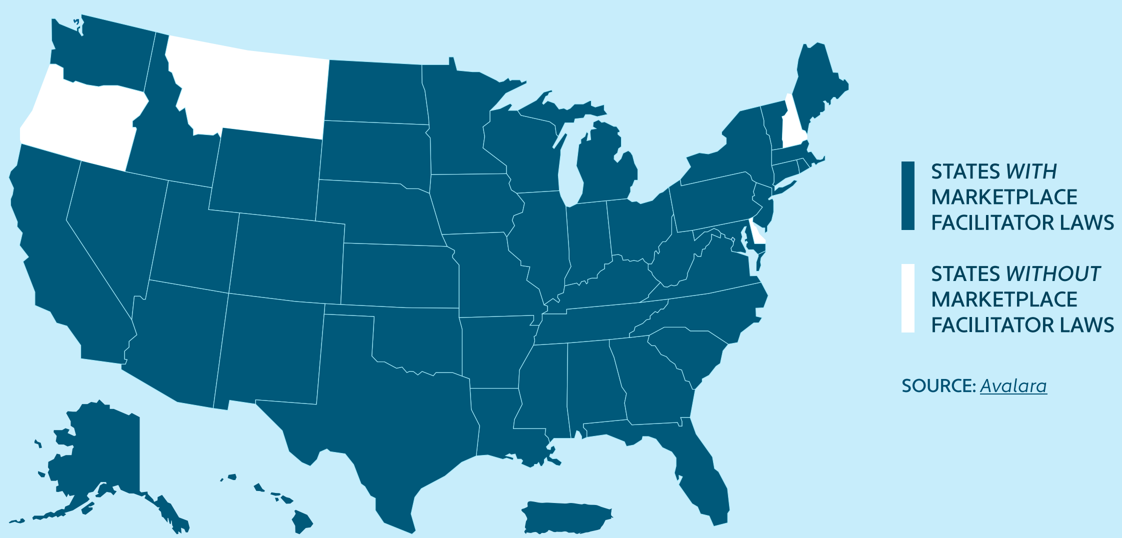
fees even if the first use was from the CTO's home office in State Y. Scott Peterson says this common practice illustrates why states typically don't rely on first use to source software sales.

YOU CAN'T OVERLOOK ECONOMIC NEXUS AND MARKETPLACE FACILITATOR LAWS

Sourcing aside, you can't talk about sales tax without mentioning economic nexus and marketplace facilitator laws.

Economic nexus laws base a sales tax obligation on a remote seller's economic activity in a state (e.g., $100,000 in sales or 200 transactions in a state in the previous calendar year). **Marketplace facilitator laws** require marketplace facilitators to collect, remit, and report sales tax on behalf of their third-party sellers. Together, these laws help determine who's required to register then collect and remit sales tax in the states where they make sales.

Every state with a general sales tax has an economic nexus law and a marketplace facilitator law. Every state's economic nexus threshold is unique. If you sold the same amount of goods and services to the same type of customers in four different states, you might need to collect sales tax in State A immediately, in State B in six months, in State C in 10 months, and in State D never.



SOURCE: *Avalara*

It's common for software companies to have customers in many states, so those companies that don't already have nexus in a state through physical presence may quickly develop economic nexus. Those that function as a marketplace may need to register as a marketplace and comply with all applicable sales and use tax laws. And those that sell their own goods and services through marketplaces may benefit from such laws, though they may need to comply with certain registration and reporting requirements in some states.

SUBSCRIPTIONS COUNT

Something to keep in mind: Economic nexus in some states can be established by making 200 transactions in a state in a calendar year. A state may consider an annual subscription that's billed monthly to be 12 separate transactions, so it may not take long to hit that 200 transactions threshold.

If there’s nothing holding you back from going global …

… don’t let tax stand in your way.

Businesses selling digital goods and services may never have shipments held up at customs, as can happen with their more concrete counterparts. That doesn’t mean international tax compliance is always smooth sailing for them.

No place else on earth has a sales and use tax system quite like the U.S.: The European Union, the U.K., and many other countries have a **value-added tax** (VAT) system; Australia, Canada, Hong Kong, India, New Zealand, and Singapore have a **goods and services tax** (GST) system. Yet whether they have a GST or a VAT, a growing number of countries are taxing nonresident suppliers of digital goods and services.

For example: **Belarus** taxes database access, domain name provision and hosting, and internet advertising services. **Canada** taxes cross-border sales of certain digital products or services at the federal level and, in some provinces, at the local level. **Colombia** is looking to implement a tax on digital subscriptions, online education/training, and a variety of other services provided through digital means.

Software companies can develop tax obligations in countries where their products and services are used, even if the subscription contract was first established in the U.S. Registration is typically the first step after establishing a tax obligation, and in some countries, registering as a foreign business is a fairly straightforward process. In other countries, registration can be quite complicated, especially for businesses with no local representation.

As in the U.S., the classification of digital services and the associated VAT/GST rates and rules vary and change frequently. In addition, the rules governing B2B transactions differ from the rules governing B2C transactions, raising the question of what counts as a business. Finally, many countries have implemented rigorous invoicing standards, including **electronic invoicing mandates**.

170

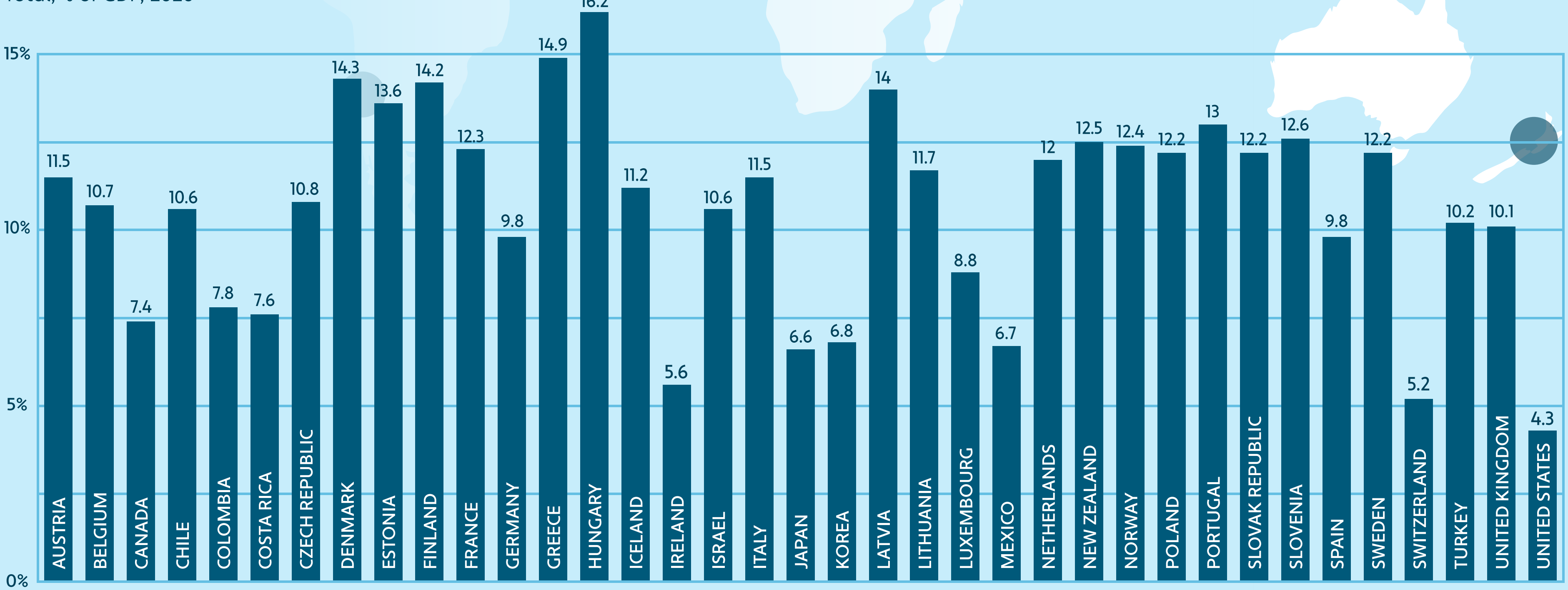
COUNTRIES HAVE VAT AS OF 2020

SOURCE: *OECD iLibrary*

“In some countries, registering as a foreign business is a fairly straightforward process. In other countries, registration can be quite complicated, especially for businesses with no local representation.”

TAX ON GOODS AND SERVICES

Total, % of GDP, 2020



SOURCE: OECD

Other issues likely to affect the software industry in 2023

REAL-TIME COMPLIANCE REQUIREMENTS WILL CONTINUE TO SPREAD

More and more countries will adopt, amend, or expand electronic invoicing requirements. For example: **Italy** changed certain e-invoicing requirements as of July 1, 2022, and further changes will take effect January 1, 2024. **Spain** will mandate B2B invoicing starting in 2024. **France** is phasing in mandatory B2B e-invoicing and e-reporting beginning July 1, 2024. Software businesses with an international client base need to stay on top of these requirements.

FRANCE'S PHASED APPROACH FOR B2B E-INVOICING AND E-REPORTING:

JULY 1, 2024: All companies and businesses receive e-invoices and large companies issue e-invoices and e-reporting

JANUARY 1, 2025: Small and midsize enterprises (SMEs) with workforce of less than 5,000 people and annual sales of less than €1.5 billion or a balance sheet total of less than €2 billion issue e-invoices and e-reporting

JANUARY 1, 2026: SMEs and very small enterprises with fewer than 250 employees and annual sales of less than €50 million or a balance sheet total of less than €43 million issue e-invoices and e-reporting

ITALY'S PHASED APPROACH TO EXTENDING THE OBLIGATION TO ISSUE E-INVOICES VIA SDI:

JULY 1, 2022: Small business with annual turnover above €25,000

JANUARY 1, 2024: All small businesses (including below the €25,000 threshold)

FRANCE SOURCE: *Avalara*
ITALY SOURCE: *Avalara*

OECD DIGITALISATION OF THE ECONOMY AGREEMENT

Representing more than **90%** of the global GDP, 136 countries and jurisdictions have joined an agreement spearheaded by the **Organisation for Economic Co-operation and Development** (OECD) to address the tax challenges arising from the digitalization of the economy. Realizing the plan will take time.

BUSINESSES AND GOVERNMENTS WILL CONTINUE TO GRAPPLE WITH CRYPTOCURRENCY AND NFTS

We cover cryptocurrency and NFTs in the **sales tax section** of this report.

$125B

A MAJOR REFORM OF THE INTERNATIONAL TAX SYSTEM

The landmark deal reached by 136 countries and jurisdictions, representing more than 90% of global GDP, will also reallocate more than USD 125 billion of profits from around 100 of the world's largest and most profitable multinational enterprises (MNEs) to countries worldwide, ensuring that these firms pay a fair share of tax wherever they operate and generate profits.

SOURCE: *OECD*

SOFTWARE

Stay tuned

We'll share more insights in our comprehensive software industry report coming your way in 2023.

UP NEXT: MANUFACTURING

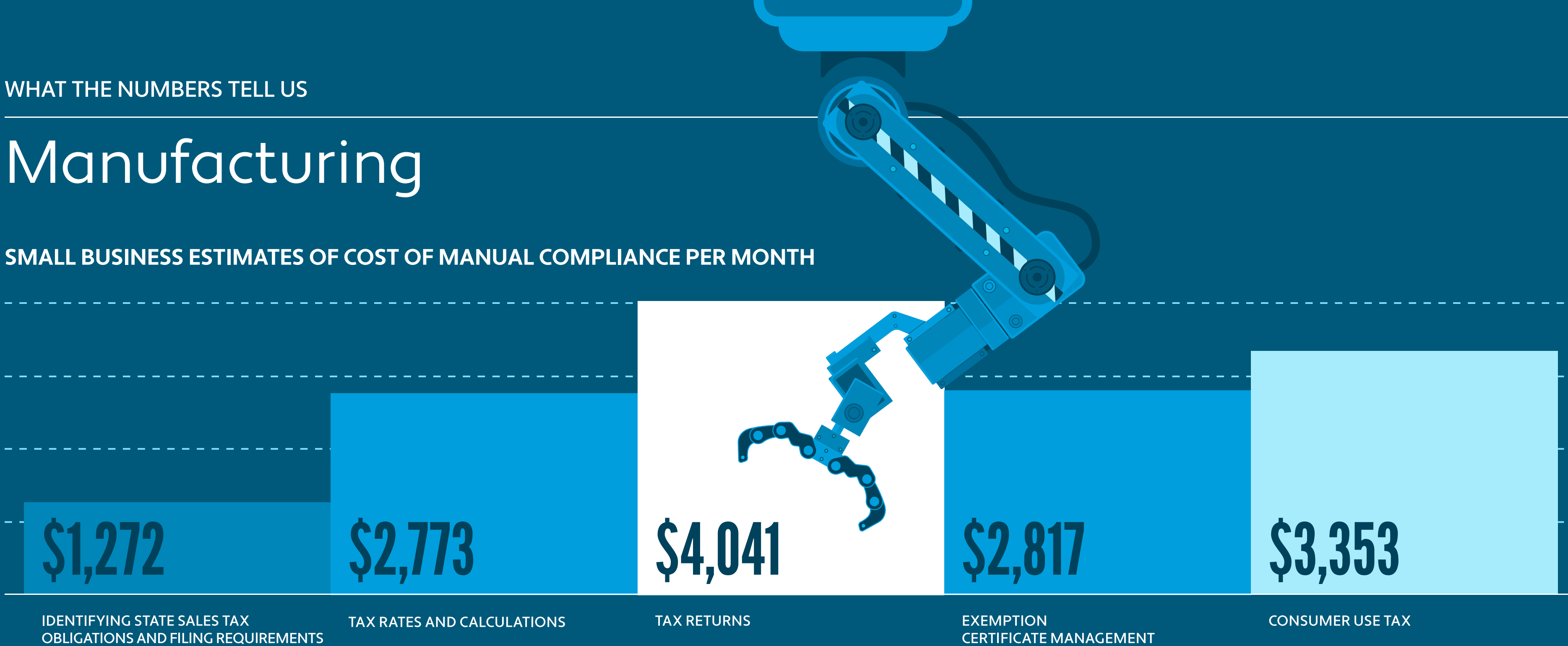
Manufacturing

Over the past few years, manufacturers have had to endure persistent supply chain interruptions and major staffing shortages. Even if the **fourth industrial revolution** helps ease lingering challenges, the manufacturing sector will still need to navigate complex and changing sales and use tax obligations. And, according to recent findings, those weigh heavily on many businesses.

WHAT THE NUMBERS TELL US

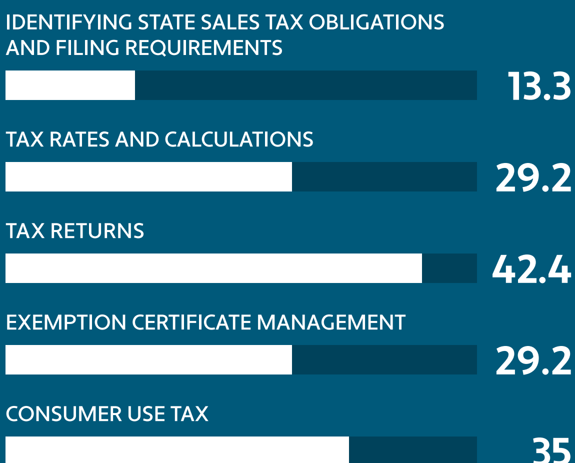
Manufacturing

SMALL BUSINESS ESTIMATES OF COST OF MANUAL COMPLIANCE PER MONTH



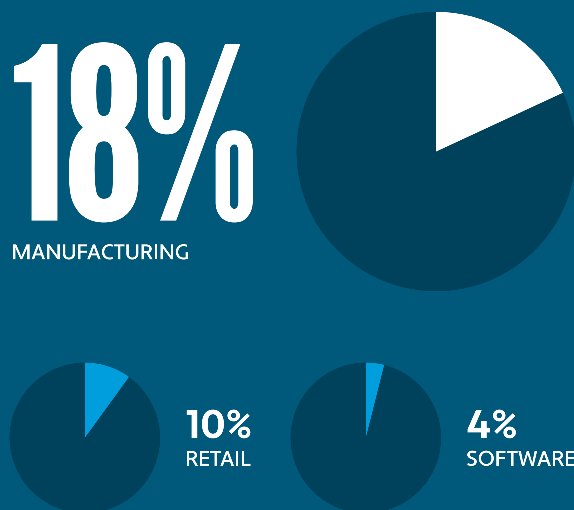
SMALL BUSINESS ESTIMATE OF TIME SPENT ON MANUAL COMPLIANCE

HOURS PER MONTH



SMALL BUSINESS AUDIT RATE

The highest rate among the industries surveyed



SMALL BUSINESS AVERAGE HOURS PER MONTH SPENT ON TAX MANAGEMENT ACTIVITIES

SOURCE: Survey of businesses with less than 500 employees conducted by Avalara and Potentiate

MANUFACTURING

Changing circumstances increase tax compliance complexity

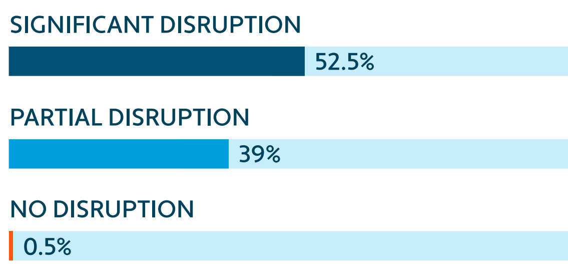
Managing sales and use tax is never easy for manufacturers, and the turbulence of the last few years has made it worse. Breaks in the **supply chain**, geopolitical upheaval, and inflation can drive manufacturers to find new customers, source alternative suppliers, and develop new processes. **Labor shortages** may inspire manufacturers to adopt **new technologies** that enable (at least some) employees to work remotely. All these factors add to the manufacturing sector's already considerable tax burden.

For example, a U.S. **manufacturer of fertilizer** saw sales explode after exports from Belarus, China, and Russia dramatically diminished. It had to quickly up production to meet the rise in demand. It also had to deliver to **new markets**. A boon for business, perhaps, but new customers and new suppliers can create new sales and use tax obligations.

The speed at which manufacturers embrace new technologies and update operations to respond

91.5%

OF SURVEYED MANUFACTURERS REPORTED SUPPLY CHAIN DISRUPTIONS

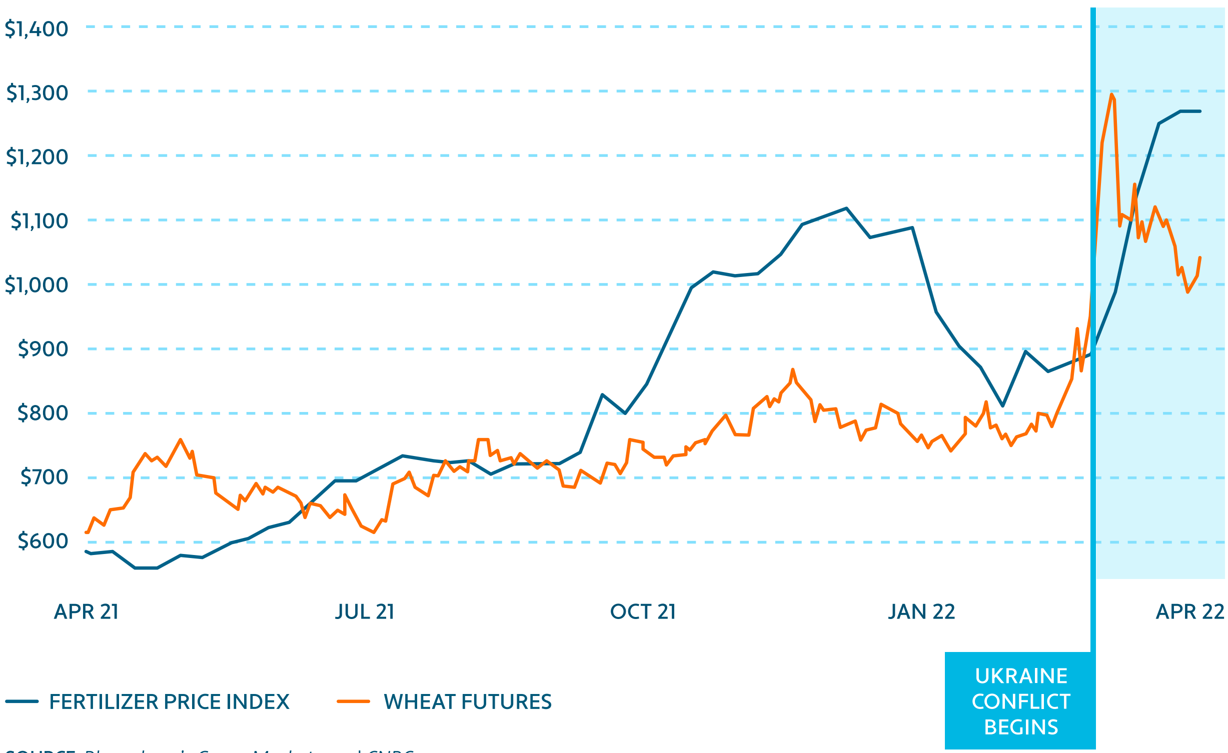


SOURCE: *National Association of Manufacturers*

UNFILLED MIDDLE-SKILL ROLES, PROJECTED JOB OPENINGS 2019-2029

SOURCE: *Deloitte*

NORTH AMERICA FERTILIZER PRICE INDEX COMPARED TO WHEAT PRICES



SOURCE: *Bloomberg's Green Markets* and *CNBC*

to changing circumstances isn't always mirrored by the finance departments that handle tax compliance. On the other hand, **tax officials** increasingly rely on artificial intelligence and other new technologies to find noncompliant taxpayers and shore up revenue. Manufacturing businesses therefore need to be on top of changing tax obligations more than ever.

THE ONGOING CHALLENGE OF ECONOMIC NEXUS

Like businesses in other industries, manufacturers are often subject to **state economic nexus laws**, which base a sales and use tax obligation on business activity in a state (e.g., $100,000 in sales or 200 transactions in the previous calendar year) rather than physical presence.

Economic nexus isn't new: The Supreme Court of the United States overturned the physical presence rule with its decision in South Dakota v. Wayfair, Inc. in 2018. And in the almost five years since, sales tax complexity for the manufacturing industry has only grown.

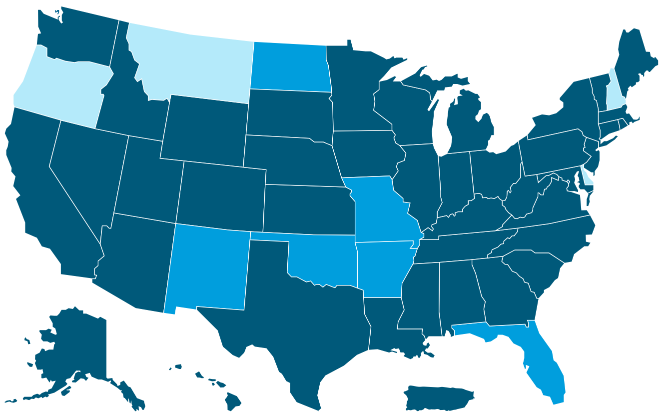
Some states base economic nexus solely on taxable tangible personal property, or taxable goods and services. Unfortunately for manufacturers, many states **include exempt sales** of products or services in their economic nexus thresholds.

Manufacturers that establish economic nexus with a state must register with the tax department, collect sales tax on any taxable sales made in the state, remit use tax as required, validate exempt transactions with an exemption certificate, and file returns on time.

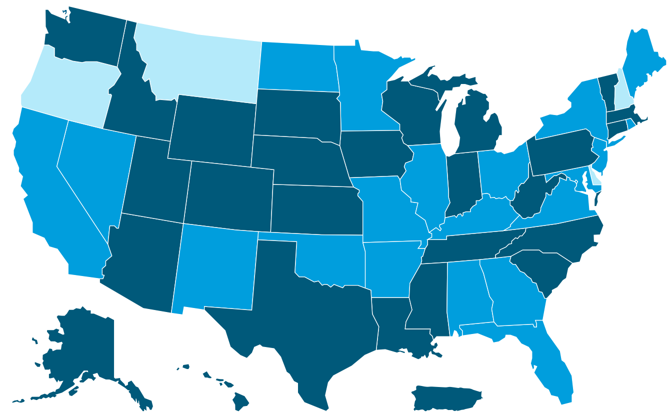
On top of all that, manufacturers must monitor sales into all states with a sales tax because they all have economic nexus laws now too. Some states require businesses to register and comply with all applicable sales and use tax laws immediately after crossing an economic nexus threshold.

Economic nexus can also impact a manufacturer's purchases. "Manufacturers often purchase large quantities of goods and services from outside their state or country," explains Scott Peterson, VP of Government Relations at Avalara. "Many remote suppliers may now have to charge sales tax because of economic nexus, so manufacturers that were accustomed to reporting use tax now

EXEMPT SALES OF TANGIBLE PERSONAL PROPERTY (TPP) IN STATES' ECONOMIC NEXUS THRESHOLD



EXEMPT SERVICES IN STATES' ECONOMIC NEXUS THRESHOLD



INCLUDED
NOT INCLUDED
STATES WITHOUT ECONOMIC NEXUS

SOURCE: *Avalara*

have to monitor their purchase invoices to make sure all those new sales-tax-collecting companies are charging the right sales tax."

EVER-PRESENT PHYSICAL PRESENCE NEXUS

Economic nexus didn't eliminate physical presence nexus: All states with a sales tax still require businesses with a physical presence in the state to register for sales tax. In some states, picking up or dropping off supplies in a company vehicle can be enough to establish a physical presence. Attendance at a conference or trade show can also trigger nexus, as can storing inventory in a state.

Clogged supply chains have inspired manufacturers across many industries, from construction to pharmaceuticals, to **build new fulfillment centers**, warehouses, and data centers. More storage space allows businesses to stock up on key supplies as they become available. More fulfillment centers can lead to faster order fulfillment and happier customers. There are advantages to expanding a physical footprint, but such growth can also trigger nexus in different tax jurisdictions.

While there are similarities, every state's nexus laws are unique. This fact alone makes sales and use tax compliance challenging for all businesses working across state lines. Especially manufacturers.

ADDING NEW TECHNOLOGY ADDS NEW TAX OBLIGATIONS

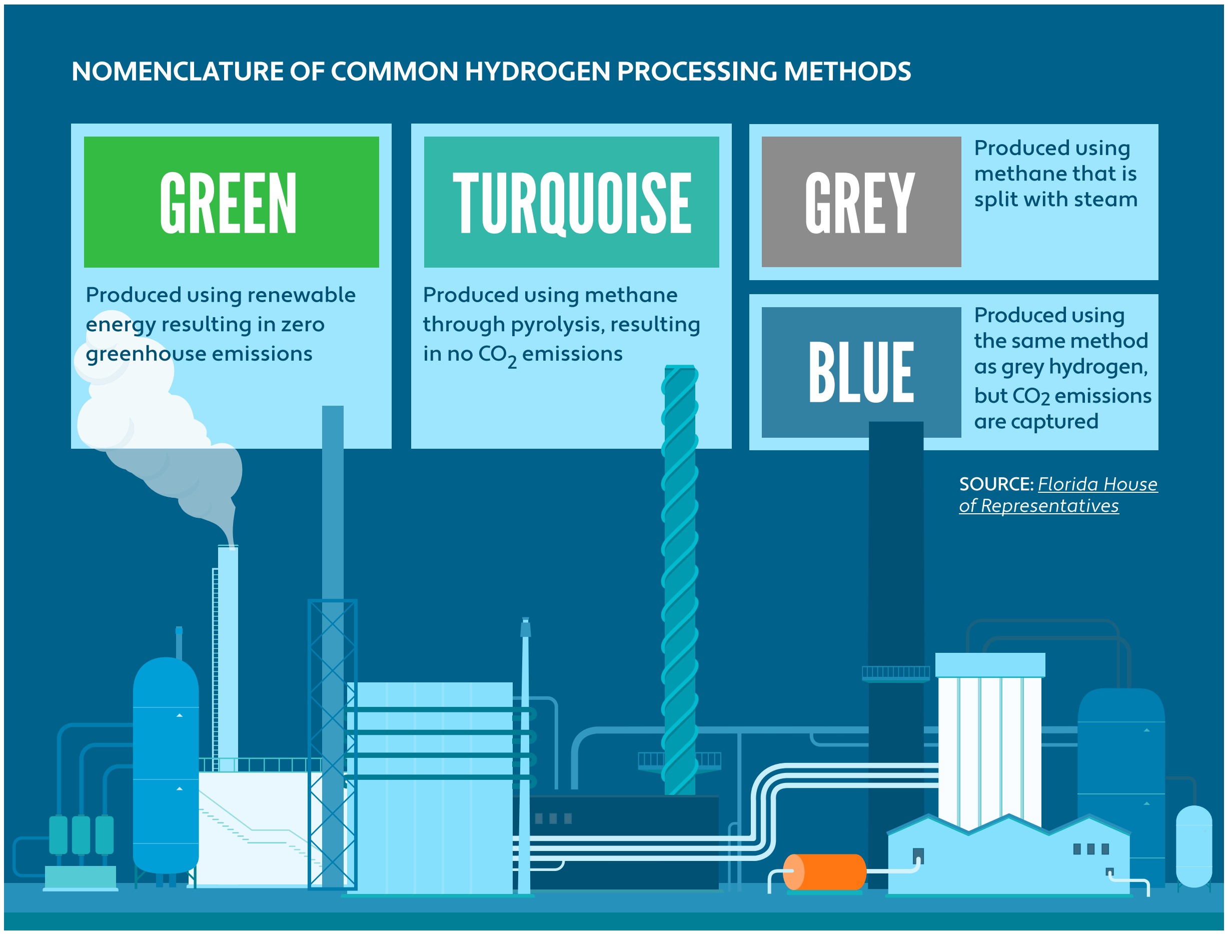
Higher costs may inspire manufacturers to put more into research and development (R & D) in the hopes of streamlining production. Most states, including **Indiana** and **Washington**, provide an exemption, partial exemption, or reduced rate for machinery and equipment, and even supplies purchased for use in R & D. Though generally beneficial to businesses, such exemptions can complicate compliance because qualifying R & D activities vary from state to state and can change over time.

For example, starting July 1, 2022, **Vermont's** sales and use tax exemption for manufacturing machinery and equipment includes equipment used as part of an integrated process. As of the same date, **Florida** provided an exemption for machinery and equipment necessary to produce electrical or steam energy that results from burning hydrogen. Florida's new policy also specifies that hydrogen is exempt from sales and use tax when purchased for use as a combustible fuel in an industrial manufacturing, processing, compounding, or production process at a fixed location.

Managing the documents that must accompany tax-exempt sales is another big pain point for manufacturers.

MORE EXEMPTION CERTIFICATES, MORE COMPLIANCE RISK

Manufacturers often have to deal with hundreds or even thousands of exemption certificates. Case in point: **R&B Wagner**, a small manufacturer specializing in architectural handrails, has over 11,000 exemption certificates in its system.



According to Silvia Aguirre, VP of Certificate Management at Avalara, there are more than 1,000 different tax exemption forms in use in the United States. Determining the correct form for each exempt transaction is the first step. Ensuring each form is properly and accurately completed comes next. Then, of course, exemption certificates need to be stored (in an easily accessible way) and renewed as necessary. It's a big job.

Knowing sales tax exemption certificate management is difficult, state tax officials tend to focus on it during audits.

Other factors likely to affect the manufacturing industry in 2023

CONSUMER USE TAX

Manufacturers often overlook **consumer use tax** for one reason or another, and they may be even more likely to do so today given the kinks in normal supply chains. To fill orders, manufacturers may need to dig into their own stores, exposing items purchased tax-free to use tax liability. They may need to pick up supplies from a new supplier rather than have them delivered from a long-term supplier. That type of flexibility is essential today, but can also expose businesses to consumer use tax liability. And as Silvia Aguirre points out, issuing exemption certificates for purchases that don't qualify for an exemption can create higher audit use tax liability than sales tax liability.

MORE B2B MARKETPLACES

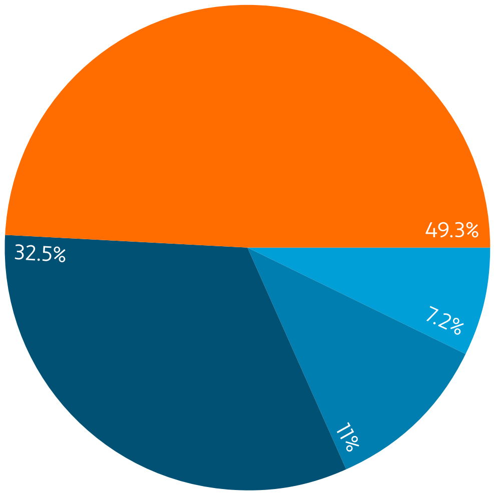
With only 5–10% of business-to-business (B2B) transactions transpiring online, there's tremendous opportunity for B2B marketplace growth. An estimated **$100 trillion** changes hands between businesses each year.

"... issuing exemption certificates for purchases that don't qualify for an exemption can create higher audit use tax liability than sales tax liability."

According to research conducted by Gartner, "B2B organizations have shown strong interest in the marketplace model because it helps them to better engage partners and improve efficiency in the buying and selling process."

Yet B2B marketplaces also face more complexity. In addition to dealing with economic nexus and marketplace facilitator laws like their business-to-consumer (B2C) counterparts, B2B marketplaces must validate exempt sales by collecting and maintaining exemption certificates for each and every third-party seller. They also must connect all their channels so they can properly validate, document, and report both taxable and exempt sales. It's an enormously burdensome task.

ELECTRONIC TRANSACTIONS ACCOUNT FOR A MAJORITY OF B2B SALES



49.3%
MANUAL TRANSACTIONS

32.5%
ELECTRONIC DATA INTERCHANGE (EDI)

11%
E-PROCUREMENT/ NETWORKS

7.2%
ECOMMERCE SITES

SOURCE: *Digital Commerce 360*

OVERPAYMENT AND/OR UNDERPAYMENT OF TAX

Manufacturers need to improve sales processes to ensure a positive experience for customers. It's not uncommon for manufacturing businesses to either undercollect or overcollect sales and use tax because it can be so difficult to determine which transactions are exempt and which are taxable (and at what rate). Businesses may not realize they've charged a customer the **wrong rate** until months down the line. Such errors can lead to steep assessments, penalties, and fines.

Auditors tend to take a keen interest in manufacturers because they usually get a good return on their investment. It's something to keep in mind.

> "Auditors tend to take a keen interest in manufacturers because they usually get a good return on their investment."

MANUFACTURING

Stay tuned

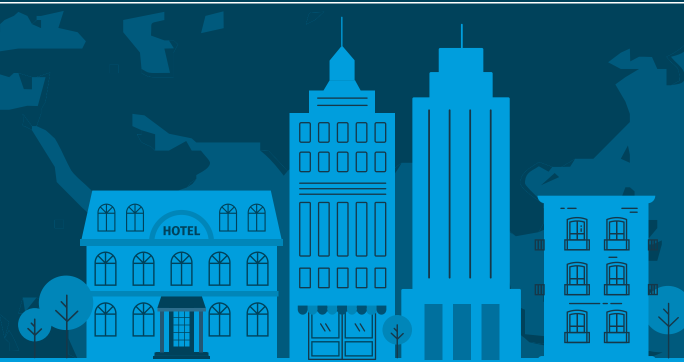
We'll share more insights in our comprehensive manufacturing industry report coming your way in 2023.

UP NEXT: LODGING

Lodging

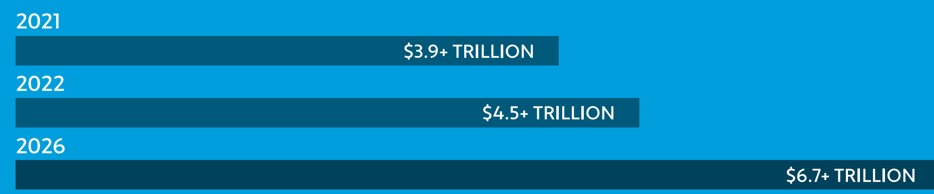
Travel is back, as anyone who's traveled recently knows. Businesses in the lodging industry are catering to an influx of holiday travelers, business travelers, and a new amalgamation of both. This is good news, but it also comes with tax compliance challenges. (Doesn't everything?)

Lodging



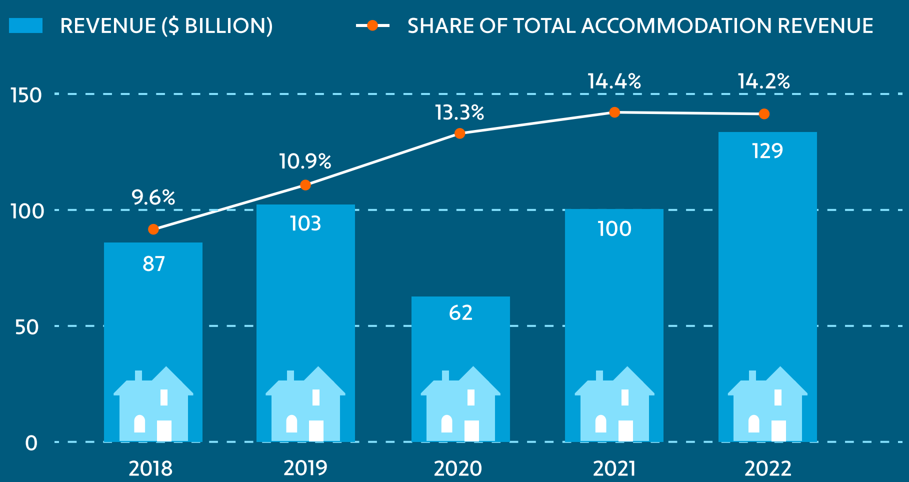
THE GLOBAL HOSPITALITY MARKET IS EXPECTED TO EXCEED

$6.7 TRILLION BY 2026



SOURCE: GlobeNewswire

GLOBAL SHORT-TERM RENTAL SECTOR REVENUES



SOURCE: Skift

60%

In 2020, over 60% of hosts elected to employ a property manager to fully manage their rentals, up from fewer than 50% in 2019

SOURCE: Avalara

Ready or not, travel's coming back

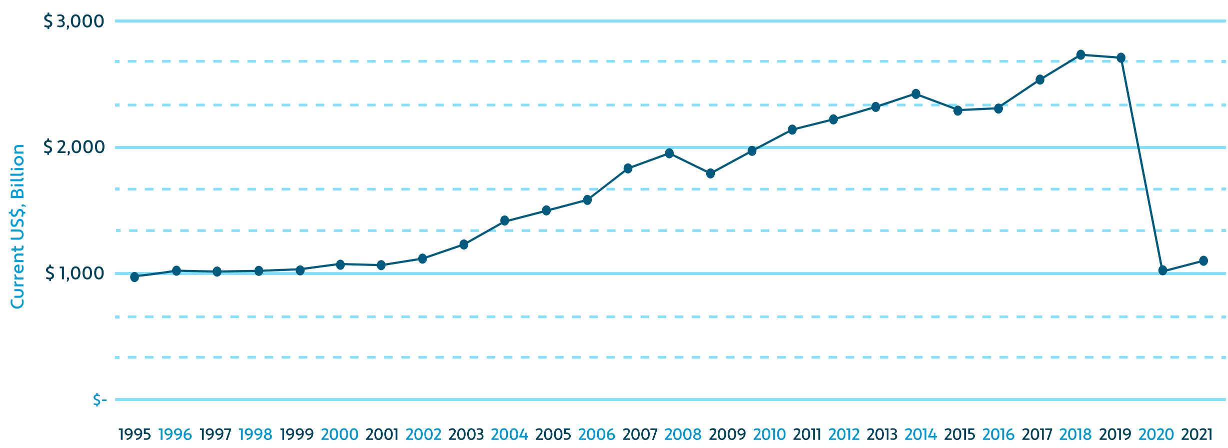
International tourism expenditures reached a 25-year low in 2020, according to **Skift Research's State of Travel 2022 report**, but they're on their way back up. Tourism experts from the United Nations **World Tourism Organization** are "cautiously confident" about the state of the industry. Despite rising inflation and high oil prices, 65% of the experts surveyed expect better tourism performance in 2023 than in 2022.

There will still be long lines. Daily passenger caps will continue at least until March 2023 at Amsterdam's **Schiphol Airport**, which is suffering from a lack of personnel much like many airports. And there could be more **air industry strikes**, like during the fall of 2022, leading to more flight cancellations and delays.

That's just what happens today when people are on the move.

THE PANDEMIC HAD AN UNPRECEDENTED IMPACT ON TRAVEL

International tourism expenditures were at a 25-year low in 2020



Source: *Skift*

LODGING

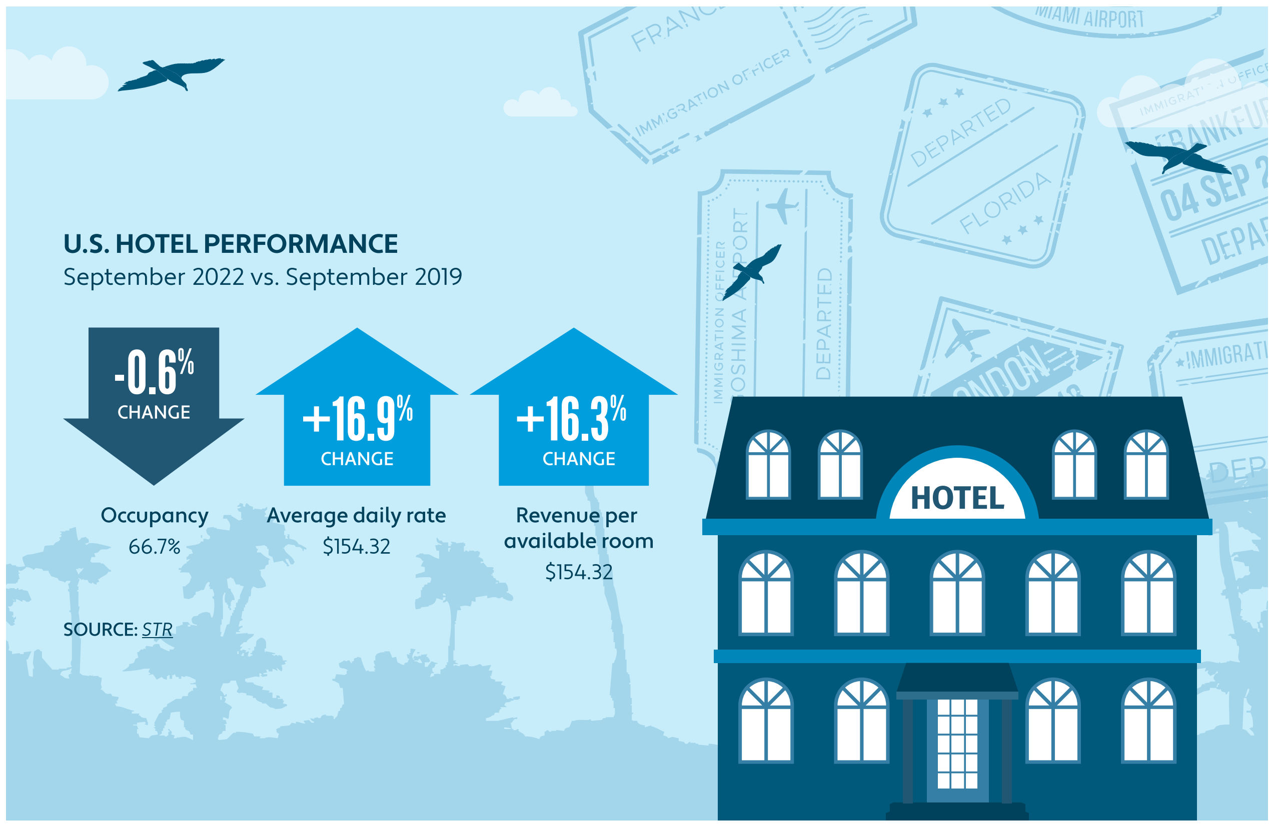
Lodging leads the travel recovery charge

Perhaps more than anything else, people on the move need a place to stay. That could be why the accommodation sector is leading the recovery for the travel industry.

Occupancy rates in U.S. hotels are **improving**, though they haven't quite returned to pre-pandemic levels.

Vacation rentals have been particularly popular. Short-term rentals accounted for roughly **27%** of the U.S. lodging market in 2021, a 10-point increase over 2019. They're such a successful business model that even traditional hotel companies like Marriott International have **entered the space**.

Short-term rentals are practically perfect for *bleisure*, blended business and leisure travel.



BUSINESS ~~VS.~~ AND LEISURE

Business travel is recovering more slowly than leisure travel, but bleisure is helping to bring business travel back.

Skift Research found about **38%** of U.S. travelers today are *laptop luggers*, people who bring laptops on vacation so they can stay three to six days longer but get some work done. *Digital nomads* have turned bleisure into a lifestyle. Skift predicts digital nomads could be a $1 billion new market in the U.S. alone. A growing number of people able to *work from anywhere* (WFA) are traveling for an extended period of time (more than 10 days).

Bleisure, laptop luggers, digital nomads, WFA. As these trends shape our lexicon and alter the shape of travel, they also help contribute to the rise of short-term rentals (STRs).

Laptop luggers: Workers with flexibility. Untethered from the office, these travelers intend to fit in some work while away.

Source: *Deloitte*

Digital nomads: Individuals who work remotely using information and communications technology. A digital nomad may work from cafes, beaches, hotel rooms, or other countries, as they're not tied down to any one location.

Source: *Investopedia*

WFA: Work from anywhere (WFA) is a flexible approach to working; a company or organization empowers their employees to work productively and autonomously from anywhere, while remaining aligned and connected with company culture and goals.

Source: *Huler*

Bleisure: A combination of "business" and "leisure" travel; vacation days are added before or after a business trip.

Source: *Forbes*

LODGING

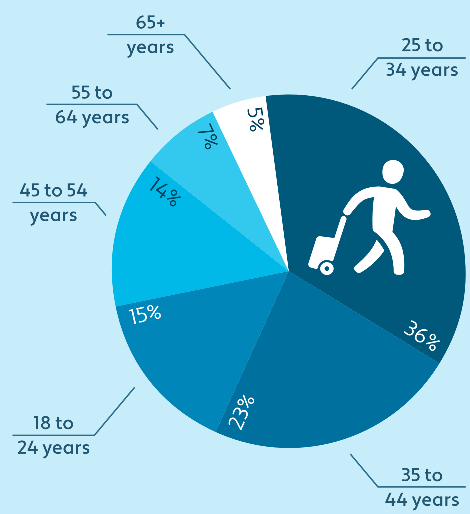
Short-term rentals

Let's be honest, short-term rentals don't appeal to everyone. One too many experiences with a host that expects guests to start a load of laundry and mop floors before leaving can sour a person on STRs for life. In fact, **72%** of respondents in a 2021 survey said they'd rather stay in a hotel or resort than a vacation rental.

But for many people, especially the under 34 crowd, vacation rentals are where it's at. Airbnb statistics reported by **iPropertyManagement** show that just over half of all Airbnb bookings are by travelers between the age of 18 and 34.

Expecting demand to outstrip supply, **Airbnb** is working to "unlock the next generation of hosts" and boost its inventory of short-term rentals. A growing number of hosts now own multiple properties. In fact, almost **60%** of bookings on Airbnb in 2019 were for hosts with multiple listings on the platform. This growing trend is known as the "professionalization" of the STR industry.

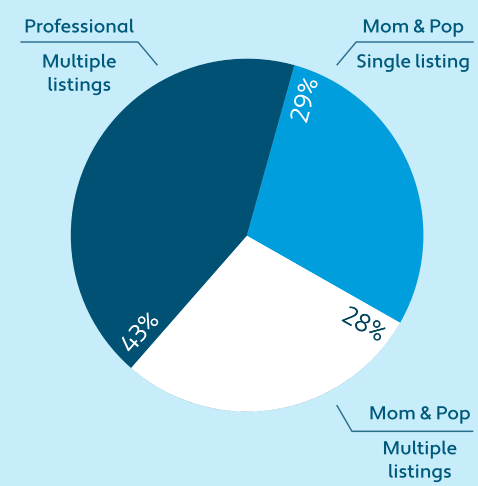
AIRBNB BOOKING GUEST AGE GROUPS



SOURCE: *iPropertyManagement*

RENTAL SECTOR IS BECOMING INCREASINGLY PROFESSIONALIZED

2019 Airbnb hosts



Source: *Skift*

The more properties a host has to take care of, the more likely they are to turn to a professional property manager to help shoulder the work required.

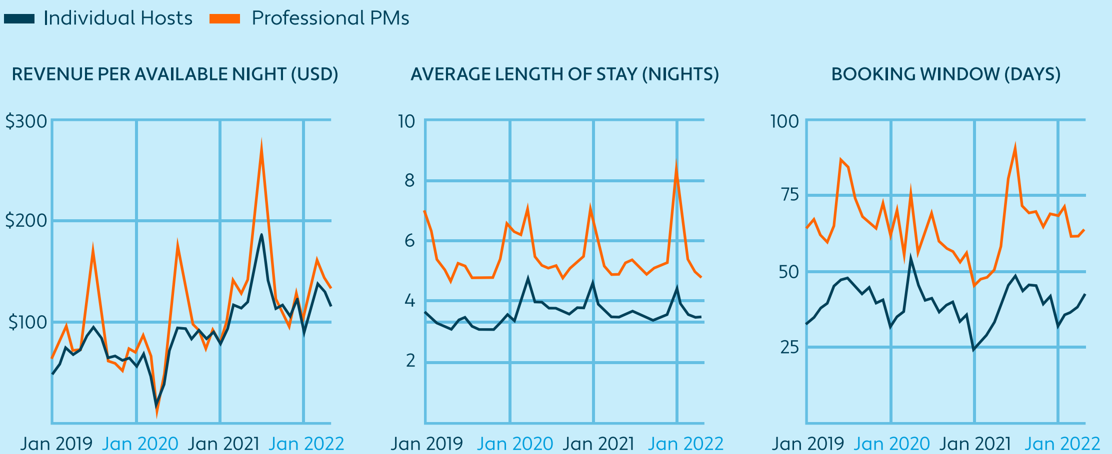
AS IF CLEANING ONE HOUSE ISN'T ENOUGH

In 2020, more than **60%** of hosts employed a property manager to fully manage their rentals. That figure could be even higher now. "Vacasa and other property management companies are growing exponentially," says Oliver Hoare, general manager of Lodging at Avalara.

Many short-term rental owners (**49%** of respondents to a survey) that use property managers live too far from their rental properties to easily oversee day-to-day operations themselves. Another 66% of property owners surveyed say they brought on a property manager for convenience.

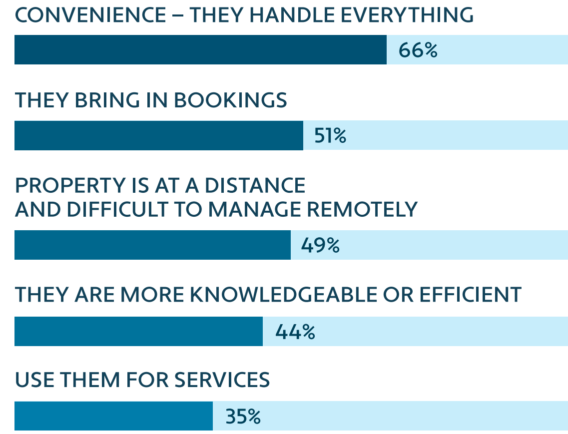
Plus, properties managed by professionals tend to see higher revenues, longer stays, and extended booking windows than properties managed by individual hosts. But good things come at a cost, and for property managers, one of the most costly costs is tax compliance.

U.S. SHORT-TERM RENTAL KEY PERFORMANCE INDICATORS BY OPERATOR TYPE



Source: *Skift*

TOP 5 REASONS FOR USING A PROPERTY MANAGER



Source: *Avalara*

LODGING

There’s no escaping tax compliance

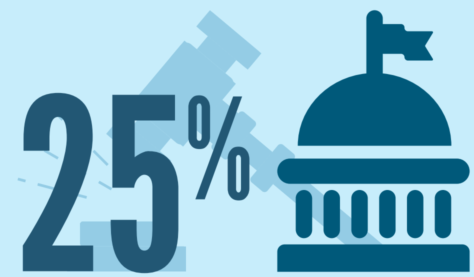
Tax compliance could be the most onerous aspect of owning or managing a short-term rental property, with the possible exception of trash-throwing, partying guests. It’s so burdensome that, according to Oliver Hoare, only about 25% of short-term rental owners comply with registration and tax requirements. The rest generally **operate under the table**. “Avalara’s biggest competitor is noncompliance,” says Hoare.

Hosts may not realize they’re required to register to collect and remit applicable state and local taxes, of course. They may think online travel agencies (OTA) like Airbnb, FlipKey, and Vrbo handle tax for them. And here’s the confusing bit: Some platforms are responsible for collecting and remitting some taxes; others aren’t.

For the most part, OTA platforms are considered marketplaces and are subject to marketplace laws, which hold marketplaces responsible for collecting and remitting tax on transactions made through the platform. However, oftentimes marketplaces are not responsible for *all* taxes within a given state; marketplace laws may only apply at the state level, not the local level.

Some platforms have voluntarily decided to collect all taxes within a given state, notes Pam Knudsen, senior director of Compliance Services at Avalara. Others have not. “The property owner needs to know which taxes their platform is collecting and which ones they’re still responsible for.”

“The property owner needs to know which taxes their platform is collecting and which ones they’re still responsible for.”



“Only about 25% of short-term rental owners comply with registration and tax requirements.”

82%

of surveyed cities require short-term rental hosts to remit taxes directly to the city, while only 5% require the platform to collect and remit local taxes on the hosts' behalf

SOURCE: *National League of Cities*

STATE AND LOCAL TAX REQUIREMENTS: A PAIN POINT FOR ALL

Because they tend to have more influence and clout than individual hosts, many OTAs are in a position to advocate for themselves and negotiate with tax authorities. Where they're not required to collect and remit applicable taxes, hosts or property managers are. According to a 2022 study by the **National League of Cities**, 82% of surveyed cities require short-term rental hosts to remit taxes directly to the city, while only 5% require the platform to collect and remit local taxes on the hosts' behalf.

The **Vrbo** website clearly states, "Property owners and managers are responsible for understanding and complying with the laws and regulations applicable to their property listing. You're also responsible for collecting and remitting lodging taxes when we're not liable to do so."

Airbnb explains, "As a host, depending on your location, you may be required to collect local tax ... from your guests." It's made agreements to collect and remit certain state and local taxes on behalf of hosts in some jurisdictions, but not others.

Unfortunately, Airbnb, Vrbo, and similar platforms may not tell each host exactly which taxes they do and don't collect. They're not tax professionals; it's not their job or responsibility.

So STR hosts and property managers have to figure out where they're required to register and which taxes they're required to collect and remit. It's incredibly complicated. Some hosts may accidentally charge customers tax that the platform has also collected. Others may simply opt to not deal with tax at all.

> "Some hosts may accidentally charge customers tax that the platform has also collected. Others may simply opt to not deal with tax at all."

In the long run, playing that game can lead to some serious consequences.

SAN DIEGO SHUTS DOWN NEARLY 50% OF THE CITY'S SHORT-TERM RENTALS

There were more than **12,000** STRs in San Diego in 2022. After May 1, 2023, there will be no more than 6,500. A new short-term residential occupancy regulation is cutting and capping the number of units available for more than 20 days per year to 1% of San Diego's housing units. Each

12,000

There were more than 12,000 STRs in San Diego in 2022. After May 1, 2023, there will be no more than 6,500.

SOURCE: *The San Diego Union-Tribune*

INTERMEDIARIES ARE LIABLE FOR TAXES ON ROOM CHARGES

Effective October 1, 2022, intermediaries such as online travel companies, travel agents, or third-party marketplaces must collect and remit Virginia retail sales and use tax and transient occupancy taxes on the "room charge."

"Room charge" includes:

- The charge for use of the accommodations
- Any charges made in connection with the rental of the accommodations
- Any fee charged and retained as compensation for facilitating the sale

Source: *Avalara*

homeowner is allowed to operate one short-term rental under the new rules.

"This is a pilot that everyone will watch," says Pam Knudsen. "Cities will be gauging the economic impact on San Diego, whether the new regulation leads to an increase in housing stock or a decrease in economic activity and tax revenue."

The city is running a lottery to determine which hosts can continue to operate and which will need to shutter. It's prioritizing "**good actors**," hosts with fewer than three verifiable complaints that paid transient occupancy tax (TOT) directly or through an OTA.

There's just one thing: The city has a hard time determining whether hosts are tax compliant. Those that register and remit to the city directly are considered likely to be compliant. But those that rely on an OTA to collect and remit the tax are less likely to be considered a good actor because, per the **City Treasurer**, "the City does not receive the data necessary to verify eligibility."

It's a big problem, for San Diego and its lottery as well as for any other state or local tax official trying to keep track of short-term rentals and related lodging taxes.

STATES MAY LEAN ON MARKETPLACE FACILITATOR LAWS

More states are extending their marketplace facilitator laws to online travel agencies (OTAs), making them responsible for collecting and remitting applicable lodging taxes on behalf of their hosts the way Amazon and other online marketplaces must collect and remit applicable sales taxes for third-party sellers.

For example, as of October 1, 2022, OTAs, travel agents, and third-party marketplaces are responsible for collecting and remitting Virginia retail sales and use tax and transient occupancy taxes on room charges (including fees retained to facilitate the sale). **Virginia** also now requires intermediaries like OTAs to report a list of property addresses for all accommodations they facilitate in the locality, along with the gross receipts for all facilitated accommodations.

Effective January 1, 2023, marketplace facilitators must collect and remit any "**other taxes**" administered by the state of **Oklahoma**, including local lodging taxes. The Oklahoma Tax Commission serves as the single point of registration and remittance for these taxes. Oklahoma did not institute a reporting requirement like Virginia.

Knudsen expects more to come on this topic as local jurisdictions also look to simplify compliance by holding marketplace facilitators responsible for collecting and remitting the applicable tax.

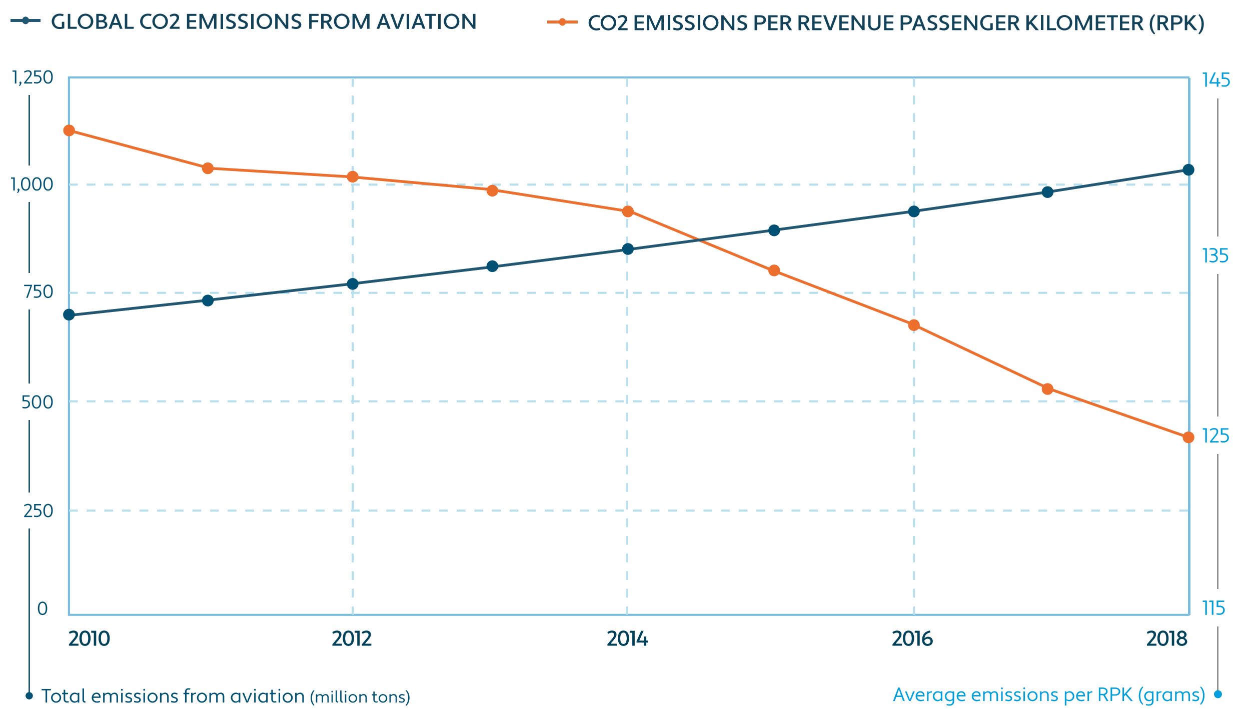
Other issues likely to affect the lodging industry in 2023

THE IMPACT OF TRAVEL ON THE ENVIRONMENT AND THE ENVIRONMENT ON TRAVEL

Many companies are looking to reduce business travel to reach emission-reduction goals. While unlikely to make much of a dent in the travel industry in the near term, this trend could eventually cut into the industry's revenue.

As extreme weather events become more common, travelers will be increasingly impacted by rerouted and canceled flights and the like. If it gets bad enough, some will stay (closer to) home.

TOTAL EMISSIONS AND EMISSION INTENSITY OF GLOBAL AVIATION



Source: *Skift*

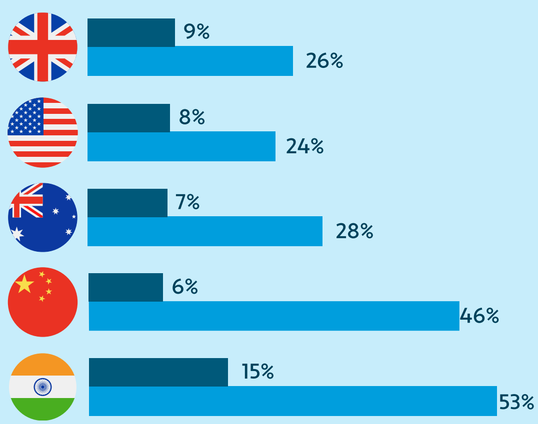
GREEN BUSINESS PRACTICES

A growing number of travelers are taking sustainable business practices into consideration when planning trips. According to a Skift survey conducted in February 2022, **24%** of U.S. respondents said sustainability was more important to them at that time than before COVID-19. Nearly 50% of respondents want sustainable practices to be certified by an independent third party, for fear of "greenwashing."

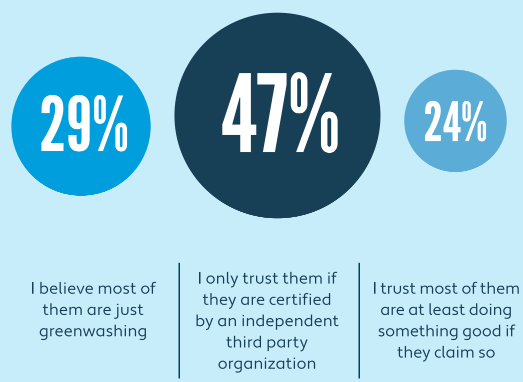
However, few travelers are actually willing to spend more to offset carbon emissions.

IMPORTANCE OF GREEN TOURISM AND BUSINESS PRACTICES

LESS IMPORTANT THAN BEFORE COVID | **MORE IMPORTANT** THAN BEFORE COVID



TRUST IN TRAVEL SERVICE PROVIDERS WHO CLAIM THEY ARE COMMITED TO SUSTAINABLE PRACTICES



Source: *Skift*

LODGING

Stay tuned

We'll share more insights in our comprehensive lodging industry report coming your way in 2023.

UP NEXT: BEVERAGE ALCOHOL

Beverage alcohol

Beverage alcohol businesses fared fairly well during the worst of the pandemic, thanks in large part to direct-to-consumer (DTC) shipping. Because DTC shipping isn't permitted in every state, expanding DTC shipping rights will continue to be a top priority for the beverage alcohol industry in 2023. But it won't be the only priority.

Beverage alcohol

PERCENT OF U.S. POPULATION THAT CAN BUY DIRECTLY FROM:

WINERIES

97%

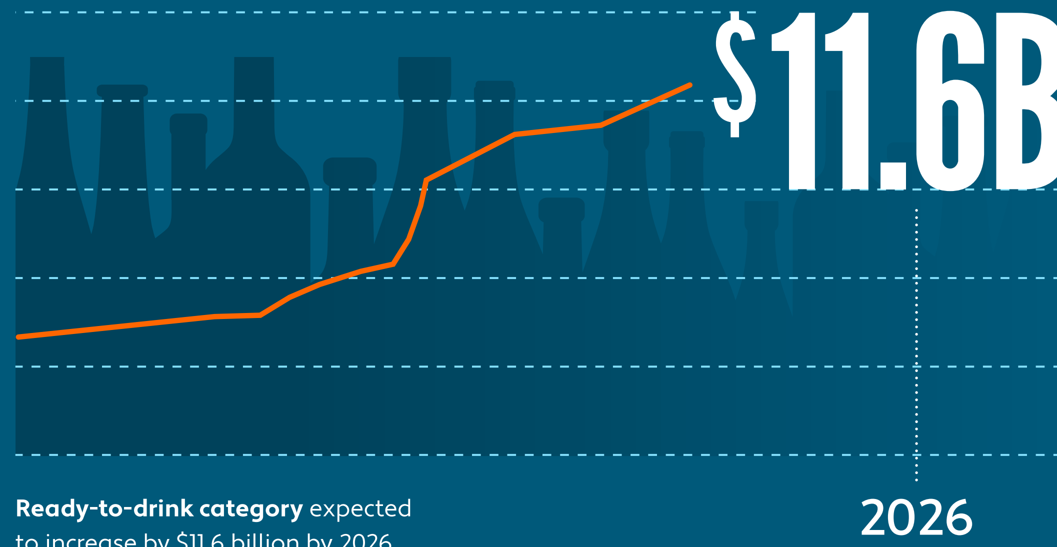
BREWERIES

17%

DISTILLERIES

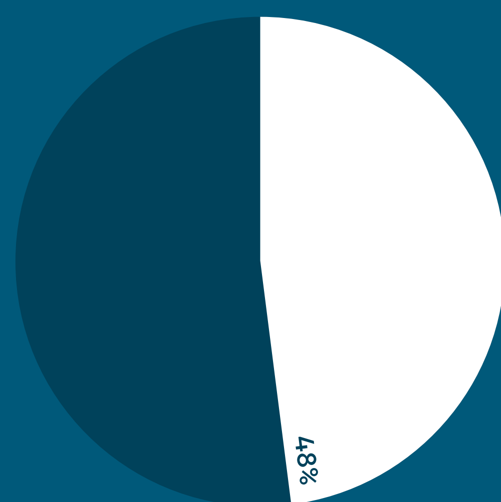
11%

SOURCE: *Industry Update*



Ready-to-drink category expected to increase by $11.6 billion by 2026

SOURCE: *IWSR*



48%

of surveyed U.S. alcohol drinkers say a company's sustainability or environmental initiatives positively influence their purchasing decisions

SOURCE: *IWSR*

BEVERAGE ALCOHOL

Leveling the playing field by expanding DTC shipping

Some of the hottest topics in beverage alcohol today stem from the U.S. Department of Treasury report examining **Competition in the Markets for Beer, Wine, and Spirits** (February 2022). Among other findings, the report recognized that state and federal laws and regulations may actually be inhibiting the growth and competitiveness of small producers.

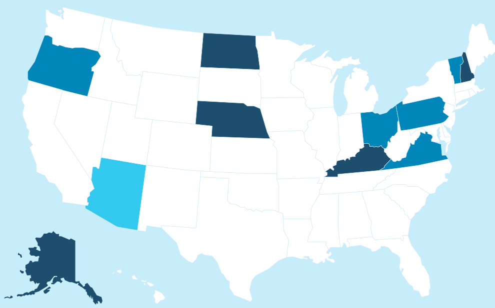
Case in point: direct-to-consumer shipping laws.

Enabling more DTC shipping could improve competition. Currently, out-of-state wineries can ship DTC in most states (only Mississippi and Utah ban all DTC shipping outright), while out-of-state **breweries** can ship to consumers in 10 states plus Washington, D.C., and out-of-state **distilleries** can ship into just six states and Washington, D.C.

Shipping DTC isn't a top issue for brewers, in part because of the price point of beer and the high cost of shipping. However, DTC shipping is a key **priority** of the **Distilled Spirits Council of the United States** (DISCUS).

And yet DTC shipping may be losing ground in the U.S. rather than gaining it. No states added new DTC shipping laws in 2022, and Nevada actually disallowed DTC shipments by beer and spirits manufacturers and by retailers effective July 1, 2021. Separate but related, in September 2022, a federal court in Ohio **dismissed a case** challenging the state's prohibition on out-of-state wine retailers shipping directly to Ohio consumers.

STATES THAT CAN SHIP DIRECTLY TO CONSUMERS



BOTH BREWERIES AND DISTILLERIES

BREWERIES

DISTILLERIES

WINERIES

All states except Mississippi and Utah

SOURCE: *Avalara (breweries)*, *Avalara (distilleries)*

BEVERAGE ALCOHOL

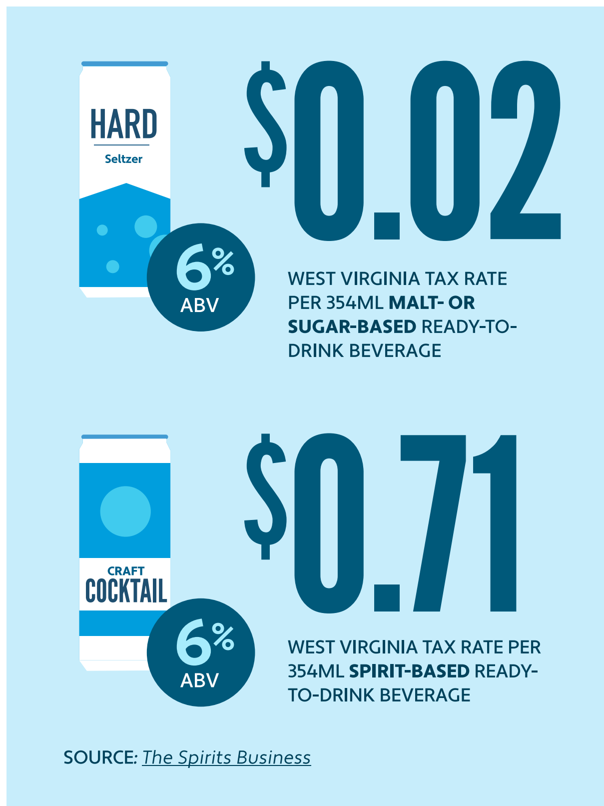
Reducing tax rates for spirit-based RTD cocktails

Another top initiative for DISCUS is lowering tax rates on ready-to-drink (RTD) products, which are experiencing a **surge in demand**.

Tax rates for spirit-based RTDs are generally much higher than tax rates for malt-based RTDs. In West Virginia, for example, spirit-based RTDs with 6% alcohol by volume (ABV) are typically taxed at a rate **35** times higher than malt- or sugar-based beverages with an ABV of 6%.

The Treasury Department report noted that differing federal tax rates among beer, wine, and spirits affect competition. Research by DISCUS bears that out: About 62% of craft distillers "not currently producing RTD products" **surveyed** by DISCUS in 2021 cited high tax rates "as a barrier to entering the market."

States seem to be listening. Already, **Michigan** and **Vermont** have reduced the gallonage excise tax rates on spirit-based RTDs. More states are likely to do the same in 2023.



Producers may need to be more environmentally responsible

Beer, wine, and spirits producers have different priorities, but all may soon need to move sustainability to the top of the list. The beverage alcohol industry will likely continue to face pressure to develop responsible sourcing, production, and packaging practices in 2023.

This isn't a new concept. The Swedish government threatened to **ban** the use of aluminum beverage cans for beer and soft drinks in 1982 unless a recycling rate of 75% was achieved by 1985. By 1995, Sweden's recycling rate had reached 92%. See what a little incentive can do?

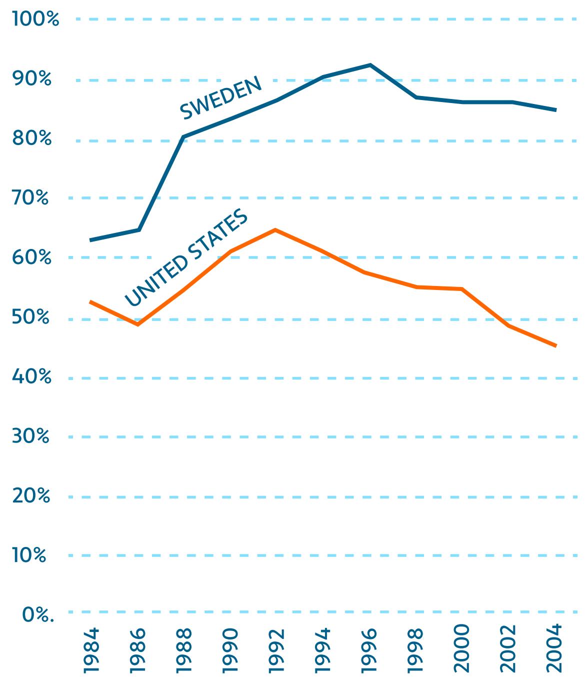
Similar ultimatums are on the horizon in the U.S., where there's a growing push for producers to take a more active role in sustainability.

Maine and **Oregon** enacted packaging producer responsibility laws in 2021, and **California** and **Colorado** followed suit in 2022. Among other requirements, Colorado's new law requires producers to participate in the state's program starting July 1, 2025, or discontinue selling affected products.

All told, about **40 extended producer responsibility (EPR) bills** were introduced in 2022 in 19 states, including Connecticut, Hawaii, Illinois, Maryland, Massachusetts, and Washington. New York Governor Kathy Hochul called for packaging EPR in her **2022 State of the State report**. The United States Congress has also considered this topic with the likes of **H.R. 2821** and **H.R. 5389**.

There's never been a time when these issues have been so important, according to the drinks market analysis firm **IWSR**. Thus, more states will likely explore EPR requirements in 2023 and beyond.

RECYCLING RATES IN THE UNITED STATES AND SWEDEN



SOURCE: *Container Recycling Institute*

BEVERAGE ALCOHOL

Warning: Better beverage alcohol labels could soon be required

All beverage alcohol producers may also need to adapt to new labeling requirements at some point.

The Treasury Department report on competition advised the Alcohol and Tobacco Tax and Trade Bureau (TTB) to revamp its alcohol labeling requirements to prioritize consumer protection and public health while reducing regulatory burdens on small and emerging businesses. TTB is the bureau within the Treasury Department that regulates alcohol imports, taxes, and trade.

Like sustainability, this is not a new concept. In 2003, 66 organizations, eight individuals, the Center for Science in the Public Interest (CSPI), the Consumer Federation of America (CFA), and the National Consumers League (NCL) submitted a petition urging the Treasury Department to establish basic alcohol labeling requirements: alcohol content, calorie count, and ingredients, including potential allergens. They've been waiting for a response ever since.

Their patience exhausted, CSPI, CFA, and NCL filed **suit** against the Treasury Department in October 2022 to compel them to respond to the nearly 20-year-old petition. There's some **question** as to whether the court will take on a case that's been 19+ years in the making. However, as there seems to be public support for better beverage alcohol labeling, the time may be right.

In the meantime, TTB provides **voluntary labeling** guidance and other **labeling resources**.

Alcohol Facts

Contains
5
Servings

Serving Size: 5 fl oz

Calories per Serving: 98

Alcohol by Volume: 13%

Alcohol per serving: 0.5 oz

U.S Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one drink per day for women

Ingredients: Grapes, yeast, sulfiting agents, and sorbates

SOURCE: *Center for Science in the Public Interest*

The debate over fulfillment houses will continue

Another key issue for many beverage alcohol producers, especially wineries, is the regulation of fulfillment houses.

Many wineries wouldn't be able to ship directly to consumers nationwide without the help of fulfillment houses, which store products for producers and prepare them for shipping. Yet, in recent years, several states have come close to banning the use of fulfillment houses. Other states are trying to figure out how to treat them.

Tennessee implemented new license and reporting requirements for fulfillment houses in the fall of 2021. In January 2022, it also mandated new license and reporting requirements for direct wine shippers. **Louisiana** is requiring direct wine shippers to identify the fulfillment houses they use as well as provide a copy of the written appointment of the fulfillment house(s) to the Louisiana Office of Alcohol and Tobacco Control.

LOUISIANA'S DEFINITION OF FULFILLMENT HOUSE

"Fulfillment house means any location or facility for any in-state or out-of-state entity that handles logistics, including warehousing, packaging, order fulfillment, or shipping services on behalf of the holder of a direct shipper license issued pursuant to Louisiana law."

SOURCE: *Louisiana Administrative Code*

Although licensed craft distillers in California can ship directly to consumers in the state until **January 1, 2024**, out-of-state spirits producers currently can't ship directly to consumers in California. If the market opens to them, many would want to use fulfillment houses as their wine-producing counterparts do. Yet under one version of a bill put forward in early 2022 to authorize DTC spirits shipping in **California**, distilled spirits direct shippers would only be able to ship from their own premises; the use of fulfillment houses wouldn't be allowed. Advocates of direct spirits shipping may regroup and reintroduce another bill in California in 2023 or 2024.

BEVERAGE ALCOHOL

Tied-house laws may be clarified

TTB and states may clarify tied-house rules, which were initially created to promote and preserve competition, responsible marketing, and temperance. Tied-house provisions prevent producers, wholesalers, and importers from crowding out competition by directly or indirectly inducing a retailer to purchase the beverage alcohol they supply.

TTB recognizes seven "**means to induce**" (practices that could lead to a tied-house violation):

- Acquiring or holding an interest in a retailer's license
- Acquiring an interest in a retailer's real or personal property
- Giving, renting, lending, or selling things of value to a retailer
- Paying or crediting a retailer for advertising, display, or distribution services
- Guaranteeing a loan or repaying a retailer's financial obligation
- Extending credit to a retailer beyond 30 days from the date of delivery
- Requiring the retailer to take and dispose of a certain amount of product (quota sales and tie-in sales)

Since tied-house provisions, for the most part, predate third-party platforms or marketplaces, it's often not clear how they apply to those platforms. Is it OK for a supplier to pay for advertising on a third-party platform that includes retailers? States will likely be asked to clarify these and similar issues in the coming years.

In fact, the **New York State Liquor Authority** was recently asked to determine whether the state's tied-house provisions allow Amazon to accept payment for advertising alcoholic beverage brands.

THE NEW YORK RULING

"The Members declare that the ABC Law does not prohibit Amazon ... from contracting with a licensed manufacturer for commercially reasonable market-rate advertising of the manufacturer's alcoholic beverage products, so long as the compensation for such advertising is not a share of the manufacturer's revenue or profits ... so long as Amazon maintains a corporate and financial firewall between its advertising and retail functions ... and the advertising relationship is not used to influence Amazon's indirectly owned retail licensees to purchase the products of the advertising manufacturers."

SOURCE: *New York State Liquor Authority*

Other issues likely to affect the beverage alcohol industry in 2023

STATES WILL TRY TO RAISE TAX RATES ON ALCOHOL

Studies suggest raising the price of alcoholic beverages can decrease alcohol consumption. That theory could soon be tested in **New Mexico** and **Oregon**, where lawmakers have introduced measures to increase beverage alcohol taxes.

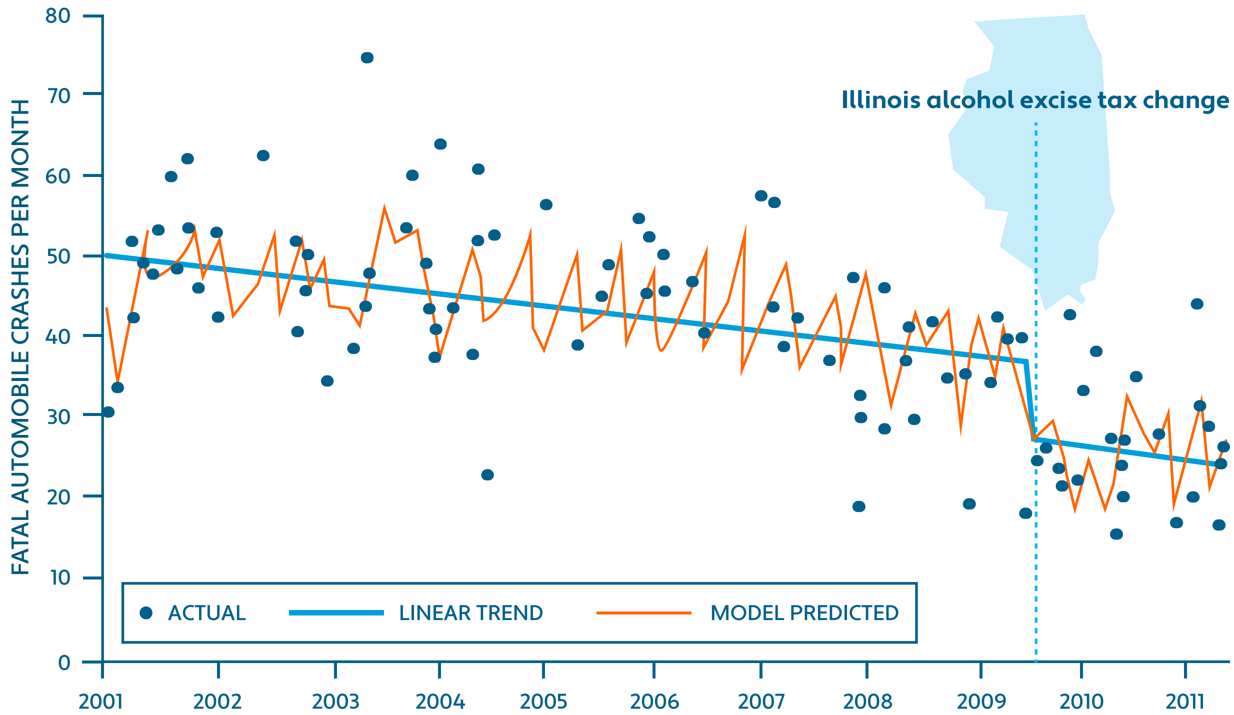
This is a conversation that's likely to continue in 2023, even as more states make alcohol more accessible by allowing the sale of cocktails to go.

GREATER CHOICE FOR COCKTAILS TO GO

Since COVID-19 first hit the U.S., at least **28 states** relaxed their laws to allow restaurants and bars to sell alcohol for takeout or delivery.

States that have made these policies **permanent** include **Alabama**, **Alaska**, Arizona, Arkansas, Delaware, Florida, Georgia, Iowa, Kansas, Kentucky, Missouri, Montana, Nebraska, Ohio, Oklahoma, Oregon, Rhode Island, Texas, West Virginia, Wisconsin, and the District of Columbia.

FATAL ALCOHOL-RELATED MOTOR VEHICLE CRASHES PER MONTH: ILLINOIS, 2001–2011



SOURCE: *American Journal of Public Health*

28

SINCE COVID-19 FIRST HIT THE U.S., AT LEAST 28 STATES RELAXED THEIR LAWS TO ALLOW BARS AND RESTAURANTS TO SELL ALCOHOL FOR TAKEOUT OR DELIVERY

SOURCE: *The New York Times*

States with temporary cocktail-to-go provisions include (with expiration dates):

- **California** (December 31, 2026)
- **Colorado** (July 1, 2025)
- **Connecticut** (June 4, 2024)
- **Maine** (March 30, 2025)
- **Maryland** (June 30, 2023)
- **Massachusetts** (April 1, 2023)
- **Michigan** (December 31, 2025)
- **New York** (June 30, 2025)
- **Tennessee** (July 1, 2023)
- **Vermont** (July 1, 2023)
- **Virginia** (July 1, 2024)

Alcohol delivery will likely continue to come under review in 2023. It brings up a lot of issues, including who's responsible for **age verification** and collecting and remitting applicable taxes – especially if delivery marketplaces are involved.

MORE LOW- AND NO-ALCOHOL OPTIONS

If it's getting easier to enjoy cocktails and other alcoholic beverages at home, it's also getting easier to find low-alcohol and no-alcohol options. All sorts of brands are entering the space with low- and no-alcohol versions of established products or net-new options. In fact, the no- and low-alcohol beverage alcohol market is expected to grow by **8%** between 2021 and 2025 in 10 global markets.

The main barriers to increased consumption today are lack of availability, lack of choice, and price. As more products hit the market, states will likely clarify regulations governing the classification of low-alcohol products.

BEVERAGE ALCOHOL

Stay tuned

We'll share more insights in our comprehensive beverage alcohol industry report coming your way in 2023.

UP NEXT: COMMUNICATIONS

Communications

Amid the headwinds of innovation, the communications industry continues to experience a tempest of tax changes. New revenue models for streaming, massive growth for communications platform as a service (CPaaS), and the spread of satellite and fixed wireless internet service providers (WISPs) are in the air.

Communications

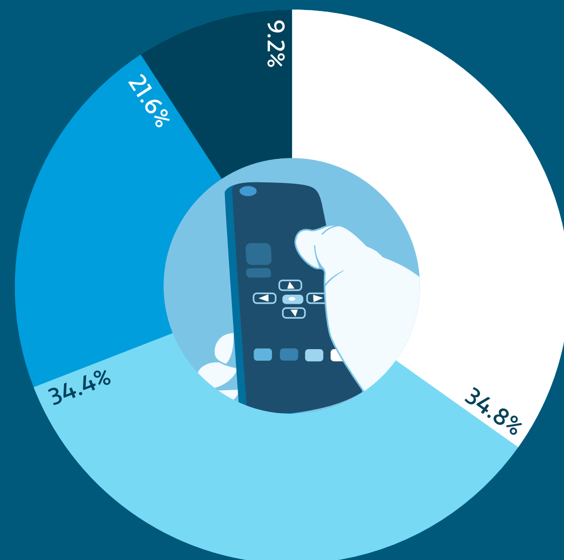
7M+

Over 7 million U.S. customers receive internet via WISPs, the fastest-growing sector of the broadband industry

SOURCE: *WISPA*

Streaming viewership surpassed cable TV for the first time in July 2022

SOURCE: *Nielsen*

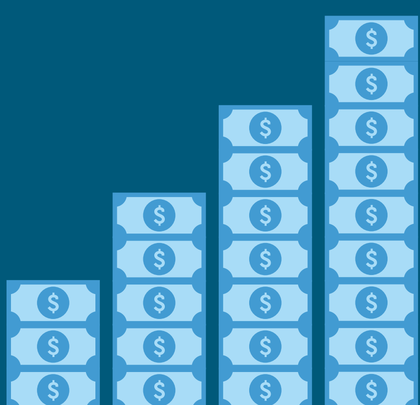


34.8% STREAMING

34.4% CABLE

21.6% BROADCAST

9.2% OTHER



$10B+

CPaaS global revenue is expected to exceed $10 billion for 2022 and generate $34 billion in sales by 2026

SOURCE: *Juniper Research*

95%

of global enterprises will adopt API-enabled CPaaS solutions by 2025

SOURCE: *Forbes*

Will the rise of ad-based streaming lead to new state taxes?

For some time, streaming companies such as Netflix, Hulu, and Prime Video have been able to kick back and reap revenues from a growing collective of cord-cutters. **Nearly half of U.S. households** don't access cable, satellite, or traditional paid TV. **Streaming viewership surpassed cable TV** for the first time in July 2022.

However, the rate of growth for subscription-based streaming services is **slowing**. That has streaming companies **turning their attention to new revenue models**, including ad-supported content. And wherever there's a new pot of money, you'll find state and local tax jurisdictions that want a cut.

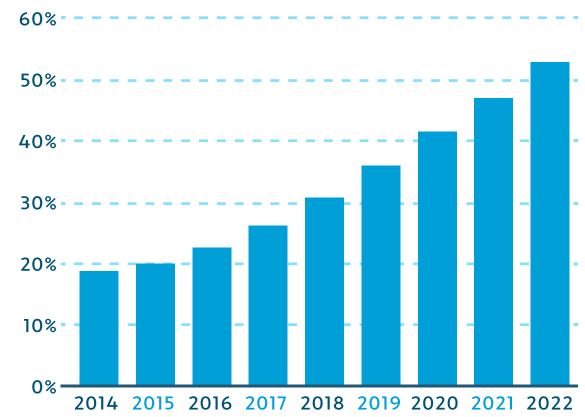
Netflix and Disney+ announced in 2022 their intentions to roll out multiple pricing tiers with lower-cost, ad-supported plans. The companies hope to appeal to consumers looking to save because of concerns about the economy. In addition, they're vying for the attention of viewers who have more entertainment choices.

Ad-supported streaming services that are free to watch have surged, and in-person events that were unavailable during the pandemic have returned.

Free and cheaper services mean **shrinking tax revenues for jurisdictions already struggling to keep up** with the shift from cable to streaming. States looking to recoup their losses have been watching to see what happens with Maryland's digital advertising tax (the first in the nation), which took effect January 2022. They now know, sort of: In October 2022, the Circuit Court for Anne Arundel County ruled the law unconstitutional; the state is appealing the decision. See the **sales tax section** for more details.

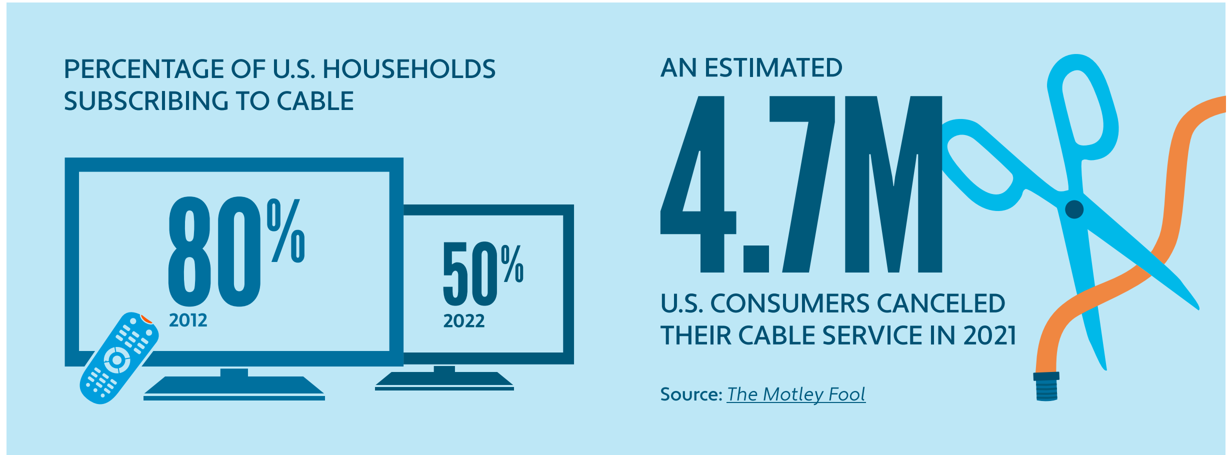
Despite all the hullabaloo over Maryland's digital ad tax, jurisdictions realize they have to follow the dollars. With industry trends pointing to additional ad-supported streaming, states can't afford to ignore taxing ads.

SHARE OF U.S. HOUSEHOLDS WITHOUT A TRADITIONAL TV SUBSCRIPTION



Source: *Statista*

At the same time, expect to see further consolidation among streaming providers in 2023. **Discovery and WarnerMedia completed their merger in 2022**, marrying the owners of Discovery+ and HBO Max. But it's not just the heavyweights banding together. As more small businesses are launching niche platforms aimed at specialized audiences, larger companies are buying them up. Eventually, viewers will be able to get more of the content they want from a single platform.



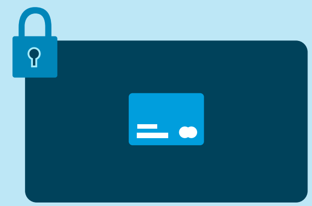
Communications platform as a service snowballs

Businesses are turning to communications platform as a service (CPaaS) at the speed of a bullet train. According to Gartner, **95%** of global enterprises will adopt API-enabled CPaaS solutions by 2025. Experts valued the industry at more than **$10 billion** in 2022 and predict it will generate **$34 billion** in sales by 2026, making CPaaS one of the fastest-growing telecom sectors.

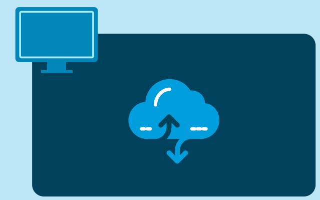
Companies use CPaaS to send customers text and voice messages including appointment reminders, purchase confirmations, and order tracking. B2B SaaS providers use CPaaS to add voice calling and video chat into their CRM and marketing automation platforms. As more people work and learn from home, CPaaS is being used to deliver videoconferencing and wireless connectivity. Often, all these technologies are available in a single solution.

WHAT BUSINESSES SHOULD WATCH FOR AS CPAAS CONTINUES TO EVOLVE:

1 | Improving customer messaging



2 | Increasing security



3 | Enabling flexible deployment

4 | Providing impressive availability

5 | Empowering advanced analytics

Source: *Forbes*

BUSINESSES THAT USE CPAAS CLOUD-BASED SOLUTIONS:

- Don't have to spend money setting up their own infrastructure
- Only pay for the features they need and use

EXAMPLES OF HOW CPAAS HELPS BUSINESSES CUT COSTS AND OPERATE MORE EFFICIENTLY:

- Automated appointment reminders reduce the cost of missed appointments
- Automated package delivery updates reduce the number of redelivery requests
- Support chatbots reduce costs associated with live support calls

Source: *Syniverse*

Big players in the field include Twilio and Bandwidth. Google, Uber, and Zoom **use Bandwidth** to embed services into their software and applications. **Twilio's customers** include Airbnb, Coca-Cola, and Dell.

Plenty of startups also rely on CPaaS companies to add voice, messaging, and video to applications they create or host.

By using CPaaS, organizations may be **liable for a wide array of communications taxes**. If you use CPaaS now or plan to integrate it into future products, it's crucial to **understand the impact on your compliance obligations** so you can take steps to reduce risk.

Satellite and fixed wireless internet service providers drive more pervasive connectivity

Once primarily used on cruise ships and by backpackers hiking in the woods, satellite is becoming more mainstream. Not only are satellite services within reach for more consumers, thanks to innovation they're also becoming more exciting.

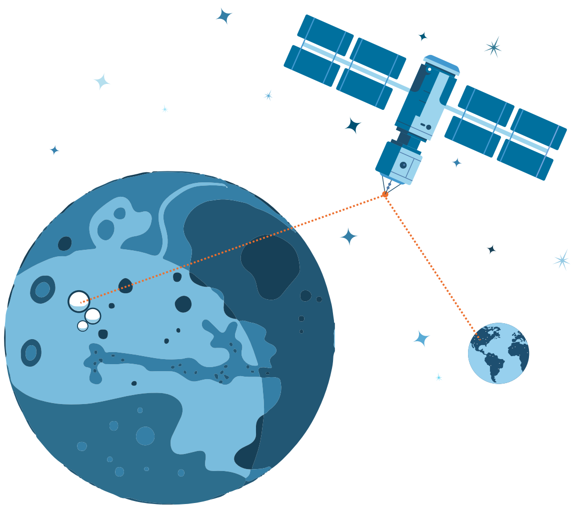
SpaceX reportedly has long-term plans to **develop and deploy broadband satellite to serve Mars**. The company's Starlink service currently provides internet access to **more than 500,000 subscribers** on Earth, mostly in rural and remote places – which may feel like another planet when you're trying to get a signal.

T-Mobile announced it's teaming up with Starlink to enable customers to send messages from dead zones by 2023. The latest iPhones from Apple can already send messages via satellite in emergency situations thanks to the company's partnership with **Globalstar**.

Satellite-powered Wi-Fi on airplanes makes flying more enjoyable for passengers, while the flight crew stays on course thanks to GPS navigation. Expect to see more advancements in satellite for aviation, as well as renewed controversy over the use of mobile phones during flight.

Although the continued spread of satellite will allow more people to connect when they're out and about, for those of us who live in urban areas, it's unlikely to change the connections we rely on at home. In this way, satellite differs from fixed wireless internet service providers (WISPs), which are breaking ground as the **fastest-growing sector** of the broadband industry.

While more than 7 million U.S. customers receive internet via these antenna-delivered services, most WISPs are small and medium-sized businesses with an average of 1,200 customers. Many tax incentives are available for WISPs to build out their networks to rural and underserved areas, expanding the availability of affordable internet services. As the category continues to grow, we'll likely see WISPs both complement and compete with other technologies.



NEARLY
500K
STARLINK USERS

Source: Tech Times

COMMUNICATIONS

Other issues likely to affect the communications industry in 2023

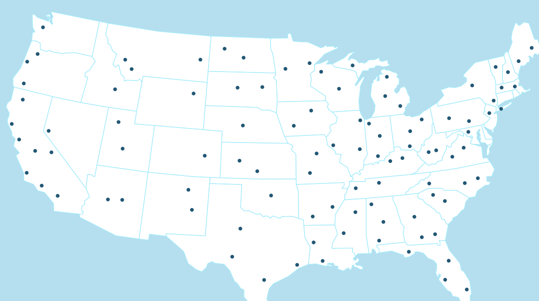
988 SUICIDE AND CRISIS LIFELINE OPENS DOOR TO NEW STATE REGULATORY FEES

As of July 16, 2022, telecommunications carriers and interconnected VoIP service providers in the U.S. and its major territories are required to direct 988 calls and texts to the **Suicide and Crisis Lifeline**. The Federal Communications Commission authorized the three-digit dialing code in 2020 to connect those in crisis with suicide prevention and mental health counselors. In doing so, **federal authorities made it possible for states to collect regulatory fees**, similar to the method used to finance 911 and poison control.

The new regulatory fees are likely to make an already complex landscape of communications taxes and fees even more complicated. States originally intended per-line, per-month public utility fees to be a fixed source of income. But these days, defining what actually constitutes a line is fuzzy due to a myriad of new technologies.

200+

crisis centers make up the 988 Suicide and Crisis Lifeline, a national network that helps thousands of people overcome crisis situations every day



Source: *Federal Communications Commission*

To stay compliant, businesses will need to have systems in place to handle the new fees and potentially increased volume of tax calculations and returns. If you provide VoIP services nationwide, for example, you probably file many returns for 911 fees. With the addition of 988, you'll likely have more returns to file.

AS NEW TECHNOLOGIES ARE DEVELOPED, COMPLIANCE COMPLEXITY WILL INCREASE

Communications technologies have evolved way past traditional voice and cable. New technologies are being rolled into more and more products and services to enhance entertainment, productivity, cloud computing, and networking. As companies seek to keep pace with innovation, they make way for increased regulatory enforcement and may become responsible for communications taxes. For example, more businesses will become liable for communications taxes in 2023 due to the proliferation of CPaaS into devices and platforms.

Nothing about the communications industry is static and there's a likelihood we'll see developments next year and beyond that we can't predict.

COMMUNICATIONS

Stay tuned

We'll share more insights in our comprehensive communications industry report coming your way in 2023.

UP NEXT: ENERGY AND FUEL

Energy and fuel

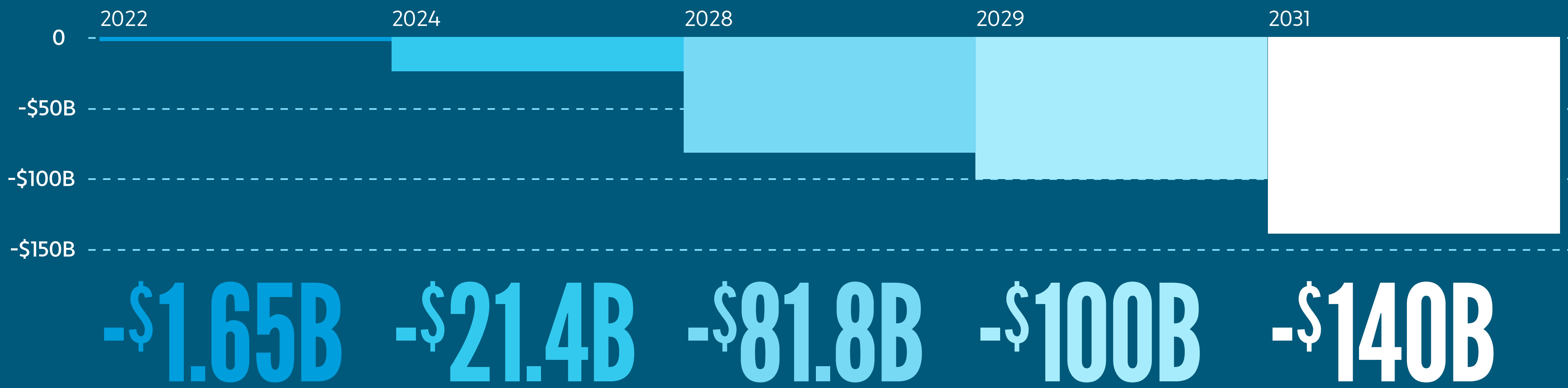
New taxes on chemicals, crude oil, and petroleum products are just some of what the energy sector has to deal with in 2023. Meanwhile, the governments that collect these taxes are trying to figure out how to replenish diminishing fuel tax revenue as electric vehicles become more prevalent.

WHAT THE NUMBERS TELL US

Energy and fuel

THE FEDERAL HIGHWAY TRUST FUND COULD BE ABOUT $140 BILLION SHORT BY 2031

SOURCE: Congressional Budget Office

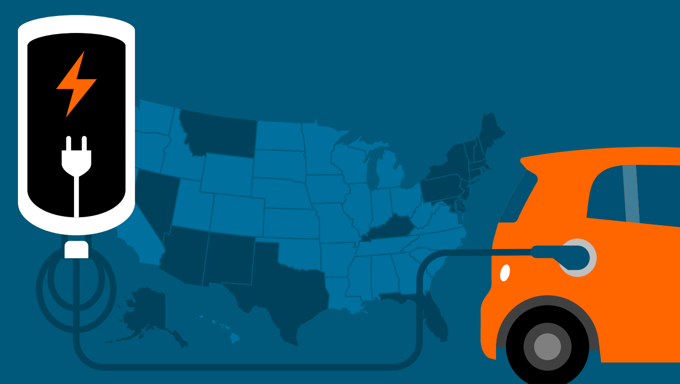


3% (or 1,334) of the approximately **44,000** contaminated sites in the U.S. are Superfund priority sites

SOURCES: Accounting Today, EPA

31 states have registration fees for plug-in electric vehicles

SOURCE: NCSL



ENERGY AND FUEL

Funding the Superfund

You've probably seen a Superfund site because there's one in every state. In fact, most states have far more than one. You'll find them in the darndest places, like next to beachfront parks.

A **Superfund site** is an area where hazardous or toxic waste was dumped, left out in the open, or handled improperly in some other way. Sometimes the identity of the party responsible for creating the mess is clear, and in that case, they can be held accountable. More frequently, hazardous sites involve numerous entities and a lot of finger-pointing. When there's no viable responsible party, cleanup falls to the Environmental Protection Agency (EPA).

If there's money for the EPA to work with, it's because of the Superfund – more formally known as the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**). Established in 1980 but allowed to lapse in 1995, the Superfund was **resurrected** with a tax on chemicals in 2021. It will receive additional funding from the **Inflation Reduction Act of 2022**, which reinstates a tax on crude oil and petroleum products.

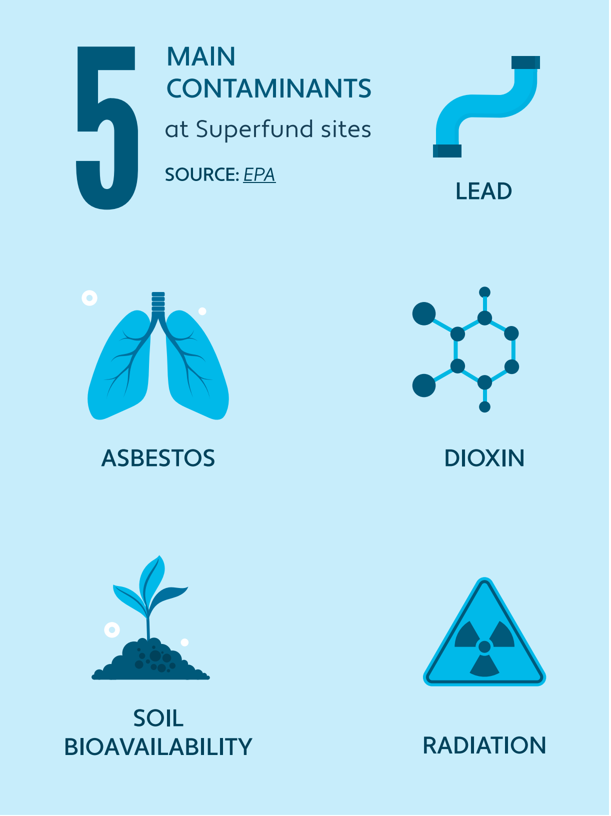
Not everyone is happy the Superfund is back.

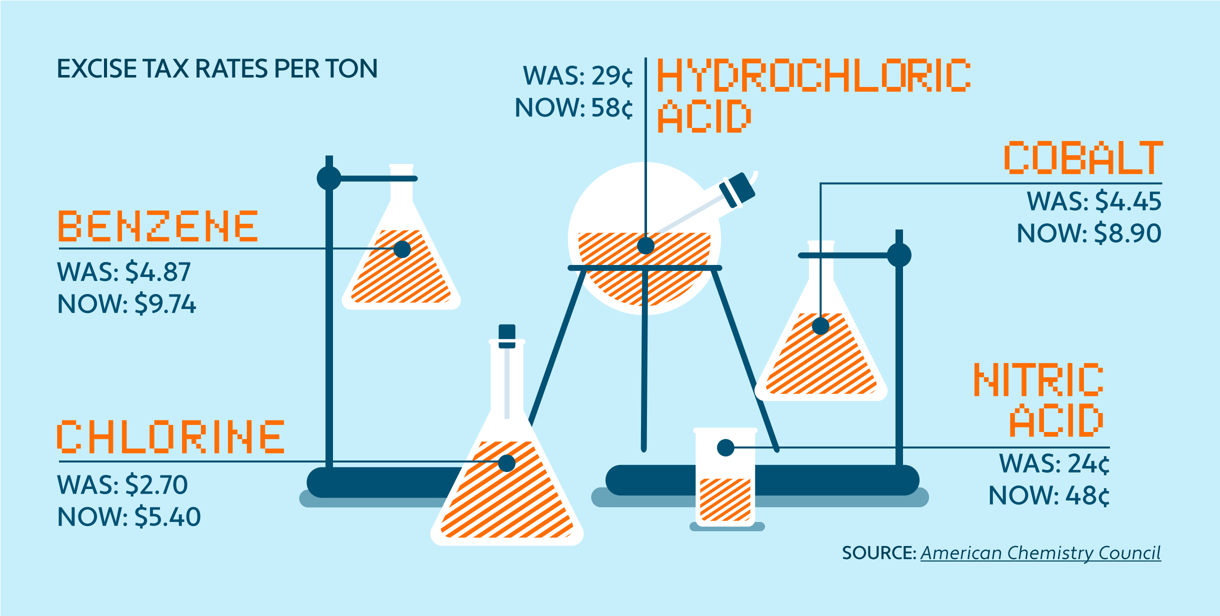
OK, no one would say they want toxic sites to flourish, or that putting $21 billion toward cleanup is bad. It's just that $21 billion can't be pulled out of the air. To replenish the Superfund:

- New **excise taxes on chemicals** went into effect on July 1, 2022
- New excise taxes on crude oil and petroleum products took effect January 1, 2023

TAXING 42 CHEMICALS, 100+ SUBSTANCES

As of July 1, 2022, federal excise tax applies to the sale or use of 42 different chemicals and more than **100 different substances** – products containing at least 20% or more (by weight or value) of one of the 42 taxable chemicals. The delta between the highest and lowest product





tax rates is considerable, from $1.49 per ton (ammonium nitrate) to $23.65 per ton (methyl isobutyl ketone). The **IRS** offers more details.

These are commonly used chemicals and substances. "You probably have a half dozen items on your desk with benzene or propylene in them," says Avalara General Manager of Excise John Beaty. "The fruit you eat was probably ripened using ethylene."

Because the chemicals and substances are taxed at different rates, businesses must identify how much of each chemical and substance a product or product material contains. Tax is assessed on each chemical's weight, value, or volume, so a product containing five different chemicals or substances could be taxed at five different rates. As a result, the taxes can be a nightmare for businesses to manage. You can learn more in this **on-demand webinar**.

121

TAXABLE SUBSTANCES (TAX RATE PER TON)

1,3-butylene glycol ($7.28) 1,4 butanediol ($4.68) 1,5,9-cyclododecatriene ($9.74) 2-ethyl hexanol ($7.16) 2-ethylhexyl acrylate ($7.34) acetone ($20.06) acetylene black ($10.52) acrylic acid resins ($5.65) methacrylic acid resins ($14.94) acrylonitrile ($9.38) adipic acid ($6.13) adiponitrile ($8.57) allyl chloride ($10.38) alpha-methylstyrene ($9.93) ammonium nitrate ($1.49) aniline ($9.40) benzaldehyde ($8.47) benzoic acid ($7.31) bisphenol-A ($10.23) butanol ($6.31) butyl acrylate ($6.84) butyl benzyl phthalate ($12.15) carbon tetrachloride ($10.62) chlorinated polyethylene ($10.25) chloroform ($10.51) chromic acid ($4.37) cumene ($9.74) cyclododecanol ($9.05) cyclohexane ($10.02) decabromodiphenyl oxide ($17.99) di-2 ethyl hexyl phthalate ($7.37) diethanolamine ($6.01) diglycidyl ether of bisphenol-A ($13.86) diisopropanolamine ($12.76) dimethyl terephthalate ($5.91) dimethyl-2, 6-naphthalene dicarboxylate ($6.81) di-n-hexyl adipate ($8.23) diphenyl oxide ($13.73) diphenylamine ($10.28) epichlorohydrin ($12.89) ethyl acrylate ($4.09) ethyl alcohol for nonbeverage use ($5.94) ethyl chloride ($4.52) ethyl methyl ketone ($7.60) ethyl benzene ($9.74) ethylene dibromide ($9.03) ethylene dichloride ($6.62) ethylene glycol ($4.38) ethylene oxide ($6.23) ferrochrome ov 3 pct. carbon ($4.83) ferrochromium nov 3 pct ($4.83) hexabromocyclododecane ($9.11) hexamethylenediamine ($8.93) isobutyl acetate ($4.47) Isophthalic acid ($6.23) isopropyl acetate ($4.54) Isopropyl alcohol ($6.82) linear alpha olefins ($9.74) maleic anhydride ($5.75) melamine ($4.28)

AND MORE

SOURCE: *IRS*

TAXING CRUDE OIL, PETROLEUM PRODUCTS

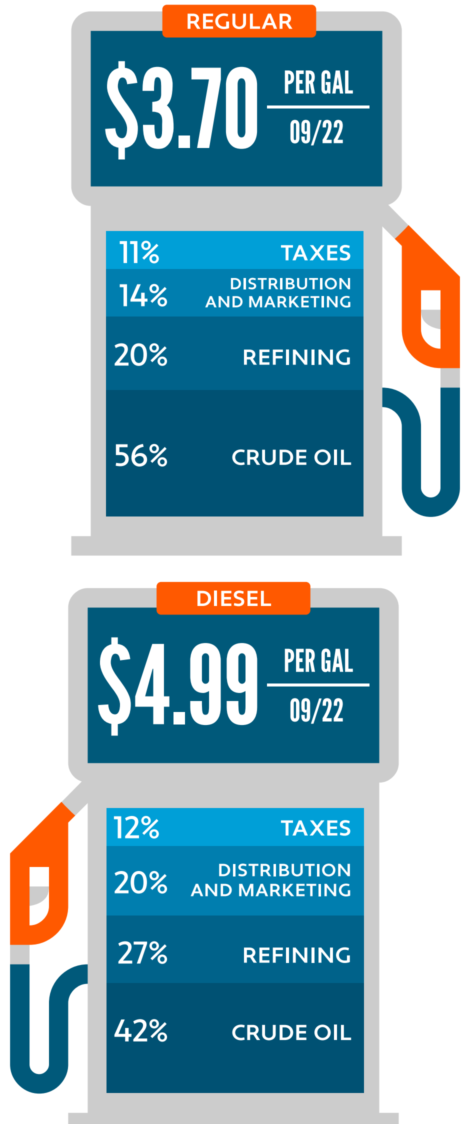
The Hazardous Substance Superfund tax on domestic crude oil and imported petroleum products went back into effect January 1, 2023, after lying dormant since 1995. Currently set to expire at the end of 2032, it's expected to raise about $11.7 billion during its 10-year life span.

The rate will be adjusted annually for inflation but will start at 16.4 cents per barrel; when last in effect in 1995, it was 9.7 cents per barrel. The tax is typically paid by refineries that receive crude oil or the entity using or importing a petroleum product. This is just another item on a growing list of tax obligations that businesses in the energy sector need to track and manage.

And how will that affect consumer prices? Well, due to refining margins, 16.4 cents per barrel is equal to 39 cents per gallon, which translates to an increase of roughly 2 cents per gallon in retail gas prices because crude oil is only about half the cost of retail gasoline. The **Tax Foundation** believes the revised tax on crude oil will have "small economic costs" and raise only "a small amount of revenue."

According to John Beaty, however, the revived tax on crude oil could have a significant impact on the cost of fuel.

WHAT WE PAY FOR IN A GALLON



SOURCE: *EIA*

The once and future electric car

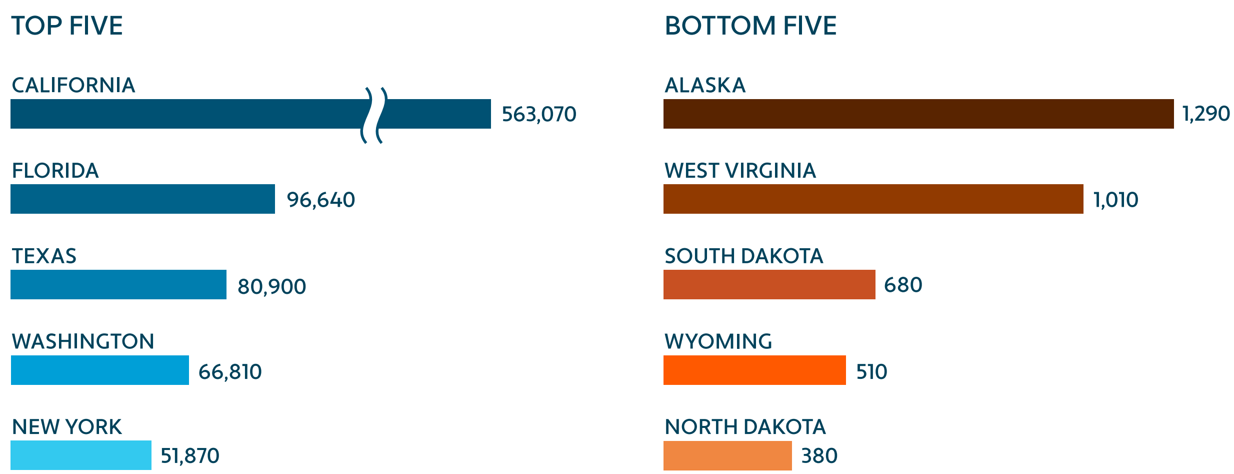
It's time to beef up the electricity grid.

Electric vehicles (EVs) accounted for about **one-third** of all vehicles on the road in the early 1900s. Yet the size of the country, limited range of EVs, and the lack of electricity outside of cities became serious impediments to sales as the United States grew. Due to those factors and the discovery of low-cost crude oil in Texas, electric cars took a back seat to their gas-guzzling counterparts by 1935.

Renewed interest in electric vehicles emerged during the fuel crisis of the 1970s and has been slowly growing ever since. Now, EVs could be on the cusp of a new heyday: EV registrations in the U.S. increased by **60%**, to about 4.6% of the overall auto market, during the first three months of 2022. More than half of the vehicles on American roads could be electric by **2050**.

This works out well in more ways than one because in little more than a decade, residents of some states may not be able to purchase a new nonelectric vehicle.

ELECTRIC VEHICLE REGISTRATIONS BY STATE IN 2021



SOURCE: *Car and Driver*

MORE ELECTRIC VEHICLES ARE COMING, WHETHER WE'RE READY OR NOT

President Biden wants half of the vehicles sold in the country to be electric by **2030**. By 2035, new gas-powered vehicles will no longer be sold in **California**. The state must meet ambitious goals between now and then:

- 35% zero-emission vehicle (ZEV) sales by 2026
- 68% ZEV sales by 2030
- 100% ZEV sales by 2035

Where California goes, other states often follow. **New York** will also require all new passenger vehicles sold in the state to be zero emissions by 2035. And in the upper left corner of the country, King County, Washington, (home to Seattle) is working toward creating a **100% zero-emissions** public transit fleet by the same year.

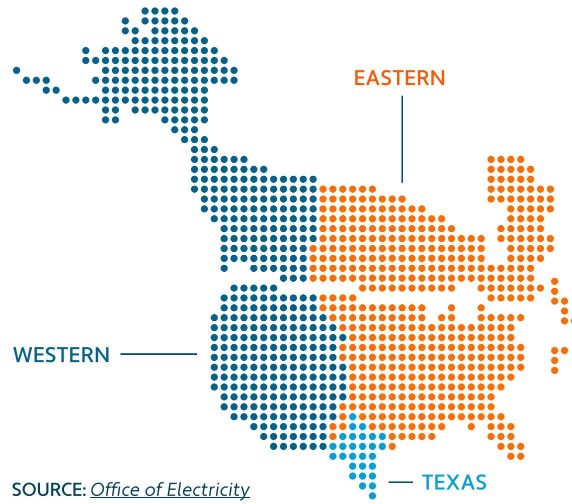
However, switching to a country that primarily uses electric cars won't be as easy as flicking a switch.

THE ENERGY ELEPHANT IN THE ROOM

The United States has yet to eliminate one of the main obstacles to widespread EV adoption: a nationwide charging system that will enable EV drivers to get from point A to point B no matter how far that distance is.

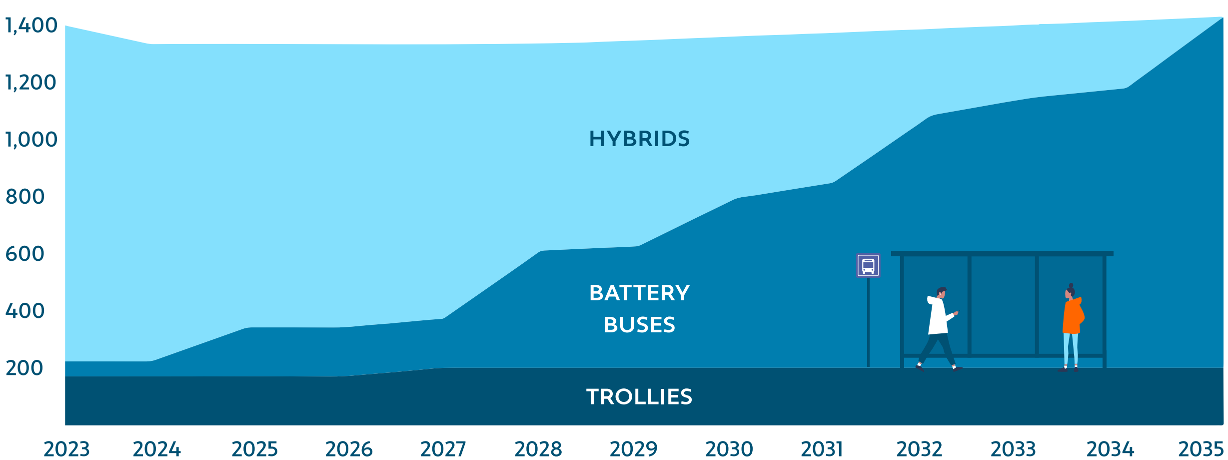
Even if EV charging stations were neatly spaced throughout the country, and they're not, some states would have a hard time reliably powering them.

NORTH AMERICAN INTERCONNECTIONS



SOURCE: *Office of Electricity*

SEATTLE: KING COUNTY'S TRANSITION TO ZERO EMISSION BUS FLEET



SOURCE: *King County Metro*

California has had trouble meeting current electrical demand. The state "teetered on the edge of **rolling blackouts**" in September 2022, and state officials predict drought, extreme heat, and wildfires will "**threaten the reliability** of California's electrical grid" for the next five summers. And in February 2021, roughly 4 million Texans lost power when a winter storm "**broke the grid**."

Producing enough electricity may not be problematic, but with just three **electricity grids** in this country, storage and distribution could be. Unlike fossil fuels, electricity can't be stored in a barrel and shipped to where it's needed: Electricity has to be generated on the grid where it's used.

So in the coming years, there will likely need to be more local production. Think solar panels on residences.

A perfect storm of energy tax revenue

With automakers already producing more **fuel-efficient** automobiles, and California and New York working to ban sales of nonelectric vehicles, gas tax revenue is expected to decline. In fact, it's already down in some states.

That's a big deal. According to **The Pew Charitable Trusts**, fuel taxes account for nearly 40% of state transportation funds, and "much of that could vanish in the coming decades." The Congressional Budget Office predicts the federal Highway Trust Fund will be about **$140 billion** short by 2031.

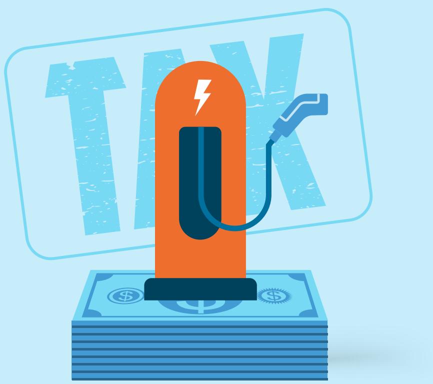
TAXING MILES TRAVELED

Recognizing this, some states are already on the hunt for other possible sources of revenue. Iowa will tax electricity at public EV charging stations starting in **2023**, and several states are exploring a fee or tax on miles driven (also called vehicle miles traveled, or VMT). In fact, participants in California's **road mileage tax pilot program** are now paying a VMT, based on odometer readings or GPS tracking.

Many economists are in favor of a VMT tax, but as the **Tax Foundation** notes, "developing an equitable and effective VMT tax will be no small feat." It will take time for a VMT tax to get off the ground. Political and public buy-in will be essential, notes Transportation Program Director Douglas Shinkle of the **National Conference of State Legislatures**.

MANUFACTURER *ANNOUNCED* EV SALES TARGETS IN 2030	ESTIMATED EV SALES, 2030
FORD 40%	860,000
GM 50%	1,290,000
VOLKSWAGEN 55%	396,000
TESLA 100%	880,000

SOURCE: *Edison Electric Institute*



4 STATES considering electricity tax at EV public charging stations

IOWA
KENTUCKY
OKLAHOMA
PENNSYLVANIA

SOURCE: *PEW*

RETAIL DELIVERY FEES

	PER DELIVERY
State *(Highway Users Tax Fund)*	5.97¢
State *(Multimodal Options Fund)*	2.43¢
Bridge and Tunnel Enterprise	2.70¢
Community Access Enterprise	6.90¢
Clean Fleet Enterprise	5.30¢
Clean Transit Enterprise	3.00¢
Air Pollution Mitigation Enterprise	0.70¢
Total of Retail Delivery Fees, each:	**27¢**

FULL PRICE RIDE FEES

	PER RIDE
Clean Fleet Enterprise	7.50¢
Air Pollution Mitigation Enterprise	22.50¢
Total of Full Price Ride Fees, each:	**30¢**

SOURCE: *CO Legislative Council Staff*

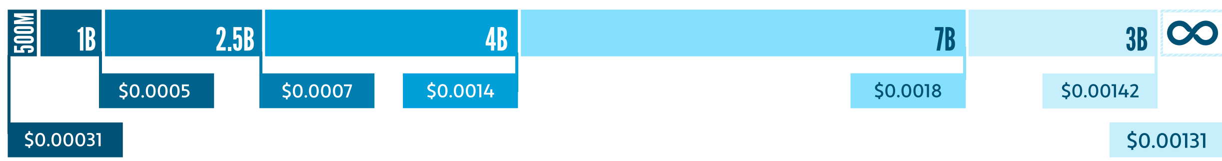
TAXING DELIVERIES BY MOTOR VEHICLE

Going another direction, Colorado now has a 27-cent retail delivery fee on deliveries of taxable goods made via motor vehicle in the state. The retail delivery fee is expected to generate **$16.8** million during its first fiscal year alone. Colorado will also boost revenue for transportation maintenance and projects through new fees on passenger rides by transportation network companies and new fees on EV registrations.

So states aren't without options. But as John Beaty explains, it will take time for the country to transition from its reliance on motor fuel taxes to alternative sources of revenue. In the meantime, we could face a perfect storm with taxes on electricity increasing but fuel taxes not decreasing. Indeed, in addition to its gas taxes, **Illinois** already has an electricity excise tax, an energy assistance charge, a renewable energy charge, and an energy transition assistance charge.

Mounting energy needs mixed with calls for clean energy could lead to the end of coal production and a rise in fuel cell, hydrogen, nuclear, solar, or wind power. Where there's industry growth, taxes are sure to follow.

ELECTRICITY DISTRIBUTION TAX PER KILOWATT-HOURS MONTHLY DISTRIBUTION RATES IN ILLINOIS



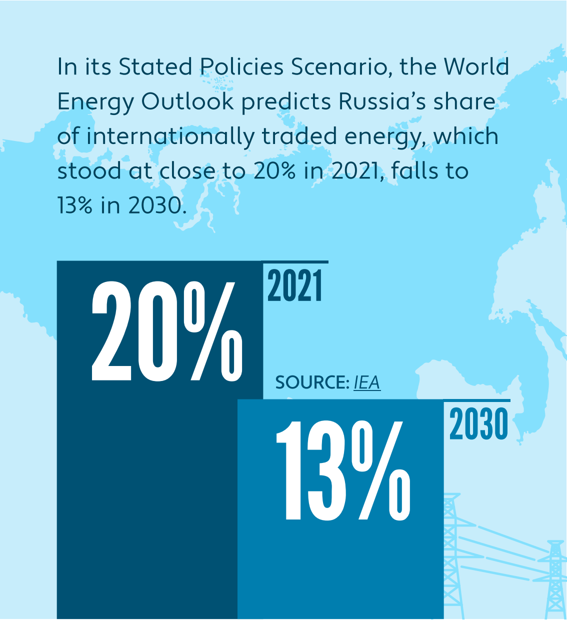
SOURCE: *IDOR*

Other issues likely to affect the energy industry in 2023

THE GLOBAL ENERGY CRISIS AND ALL IT UNLEASHES

There will continue to be fallout from Russia's invasion of Ukraine, which triggered a global energy crisis and, according to the **International Energy Agency** (IEA), is prompting a "wholesale reorientation of global energy trade." The IEA says the crisis is "causing profound and long-lasting changes that have the potential to hasten the transition to a more sustainable and secure energy system."

As the IEA notes, the energy crisis delivered a "shock of unprecedented breadth and complexity" to the global energy sector. In the near-term, however, many governments are focusing on protecting consumers from the worst impacts of the crisis. They're also starting to consider more long-term solutions, such as diversifying oil and gas supplies. Exactly how this will all play out remains to be seen.



ENERGY AND FUEL

Stay tuned

We'll share more insights in our comprehensive energy and fuel industry report coming your way in 2023.

UP NEXT: TOBACCO AND VAPE

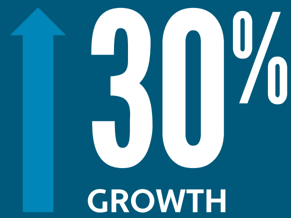
Tobacco and vape

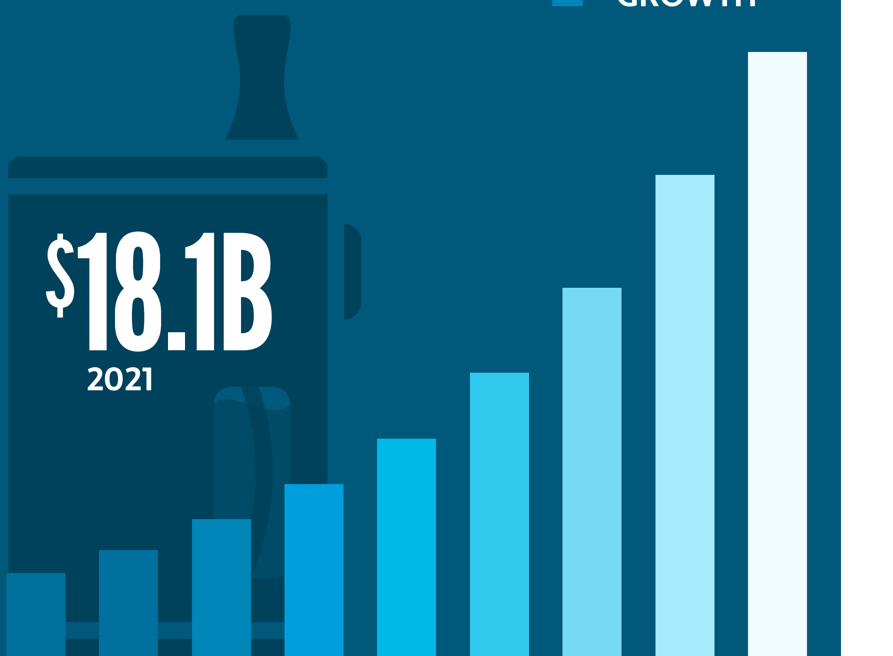
The tobacco and vape industries face both challenges and opportunities brought about by federal enforcement, increased tax complexity at the state level, and the reopening of sales channels shut down during the COVID-19 pandemic. Meanwhile, cannabis businesses are attracting attention at the federal level as more states legalize marijuana.

Tobacco and vape

The global vaping market was valued at $18.1 billion in 2021 and is expected to grow at a rate of 30% through 2030

SOURCE: *Grand View Research*

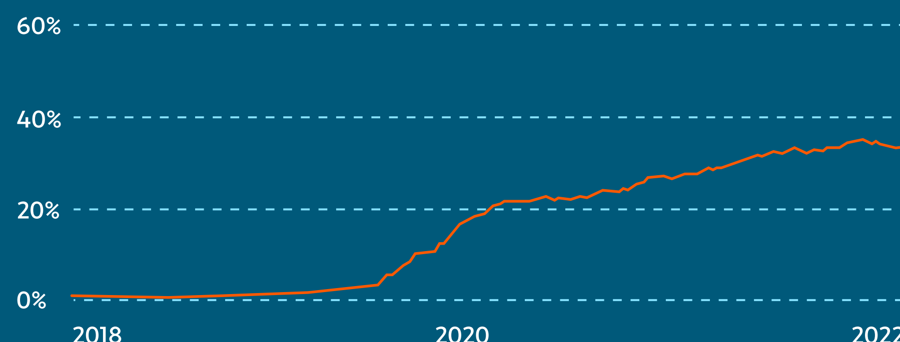




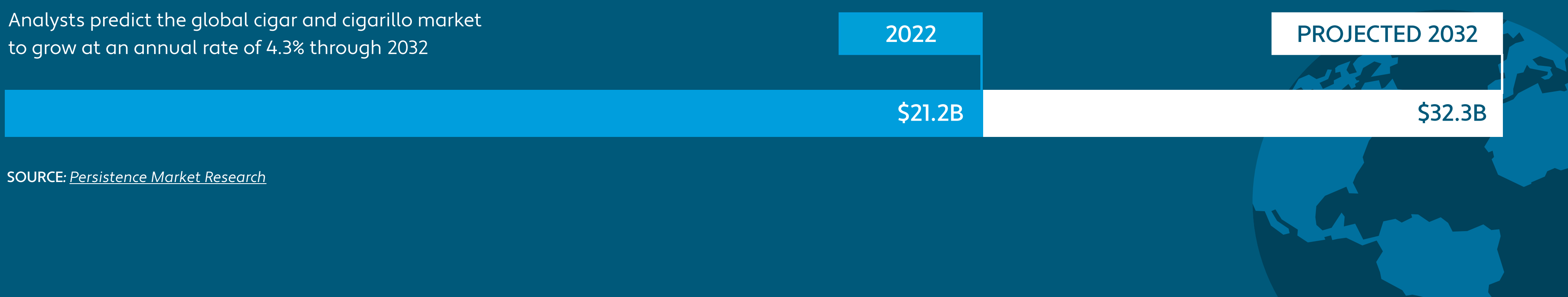
Flavored disposable vaping devices account for one-third of U.S. e-cigarette sales

SOURCE: *Reuters*

U.S. MARKET SHARE OF FLAVORED DISPOSABLE E-CIGARETTES



Analysts predict the global cigar and cigarillo market to grow at an annual rate of 4.3% through 2032



SOURCE: *Persistence Market Research*

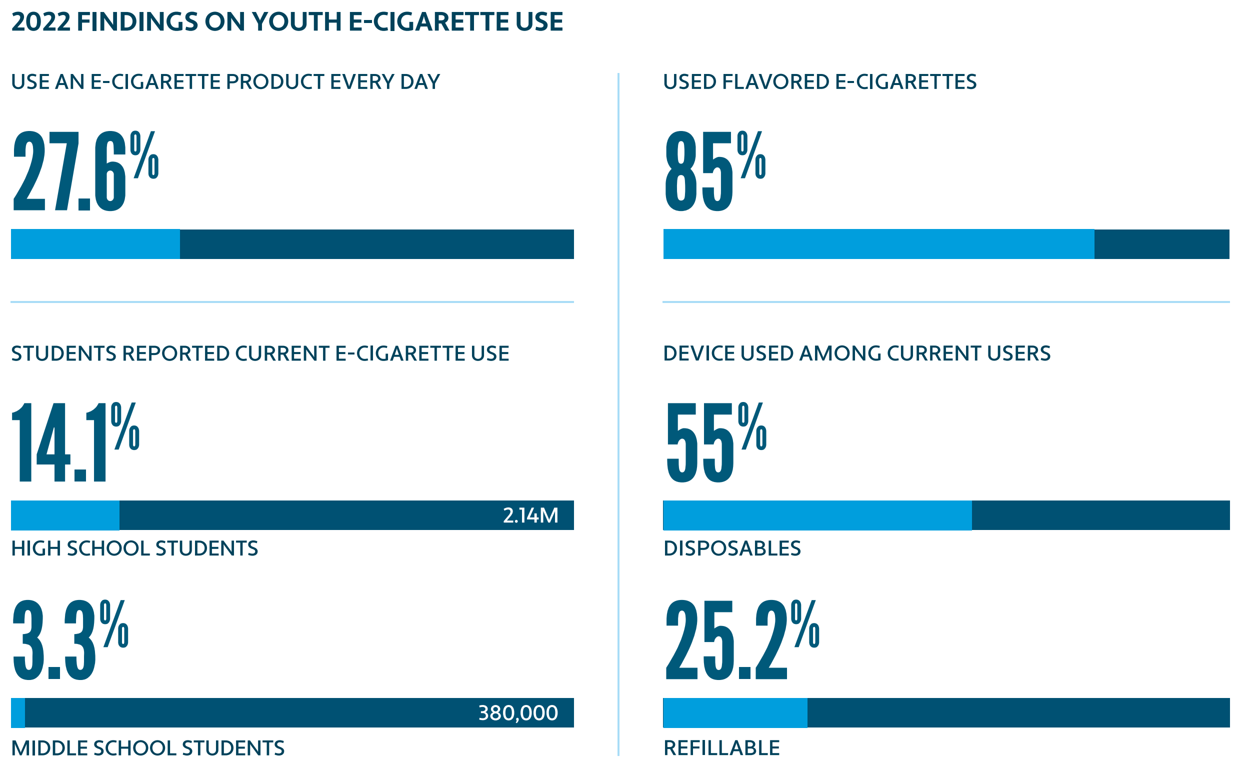
TOBACCO AND VAPE

FDA cracks down on candy-flavored e-cigarettes, sales of disposable products rise

The U.S. Food and Drug Administration (FDA) continues to put pressure on manufacturers of e-cigarettes with fruity, sweet flavors that appeal to teens. A **survey by the FDA** and Centers for Disease Control and Prevention found that 14.1% (2.14 million) of high school students and 3.3% (380,000) of middle school students use e-cigarettes. Almost 85% prefer flavored products.

A **recent report** from the Federal Trade Commission (FTC) found that sales of flavored disposable e-cigarettes and menthol e-cigarette cartridges surged in 2020. **According to the FTC**, "This significant increase, which coincides with a federal ban on the flavored cartridges popular with young smokers, suggests that youth e-cigarette use shifted to substitute products rather than declined."

Flavored disposable vaping devices account for one-third of U.S. e-cigarette sales, up from less than 2% in 2019, according to a Reuters review of retail sales data. The data shows consumers



SOURCE: *FDA*

spent more than $2 billion annually on the new generation of disposable e-cigarettes.

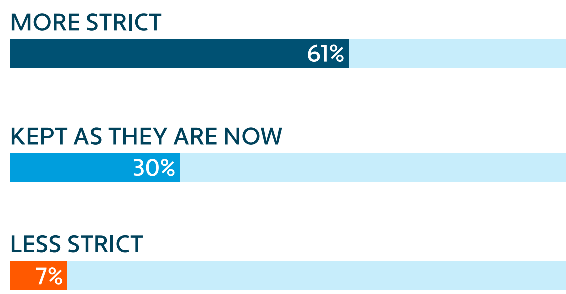
Vape product manufacturers had until **September 2020** to submit applications to the FDA for authorization to be a deemed tobacco product. In order to be approved, they needed to provide clinical trial data showing their products met regulatory standards for health effects. Makers of e-cigarettes containing synthetic nicotine had less than two months to **apply to the FDA** for authorization after Congress passed a **law** giving the **FDA authority** over lab-created nicotine products.

As of June 2022, the FDA had approved applications for **23 electronic nicotine delivery systems** (or ENDS), but has rejected about a million other applications. Many of the rejected applications were for flavored vape products. In June 2022, the FDA **banned the sale and distribution of Juul vaping products**, one of the most popular brands on the market, and ordered those already in stores to be removed. Juul immediately went to court and received a temporary stay on the ban. This isn't over.

While cigarette sales are **declining**, the global vaping market was valued at $18.1 billion in 2021 and is expected to **grow at a rate of 30%** through 2030. The FDA will likely continue to tighten the reins on the vaping industry. A Gallup survey of American adults shows **61% of respondents want laws on e-cigarettes to be made stricter**. Some in the industry wonder what will happen to existing inventory for products that can no longer be sold in the U.S. In certain cases, the FDA is allowing manufacturers to export their vapor products to other nations. **Thirty-six countries prohibit the sale of vaping products**.

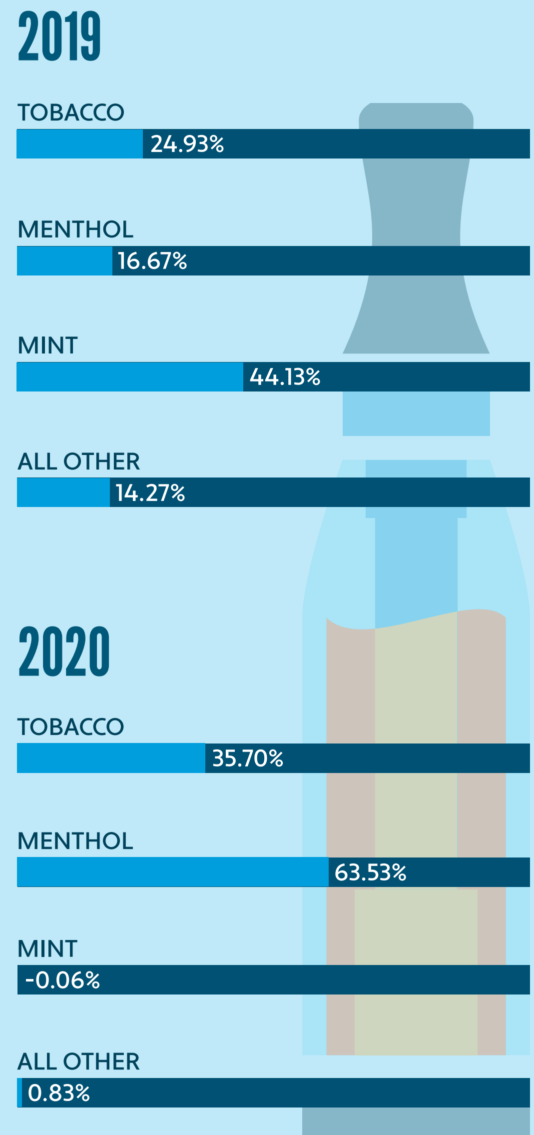
AMERICANS' VIEWS ON REGULATING ELECTRONIC CIGARETTES

"Do you think the laws and regulations covering e-cigarettes should be made more strict, less strict or kept as they are now?"



SOURCE: *Gallup*

PERCENTAGES OF CARTRIDGE FLAVORS SOLD



SOURCE: *Federal Trade Commission*

TOBACCO AND VAPE

Sales of cigars and cigarillos rebound as consumers seek luxury

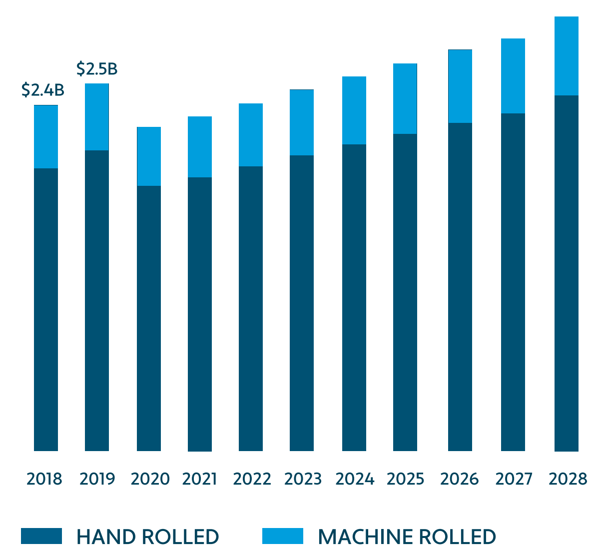
The COVID-19 pandemic saw cigar manufacturers turn to online sales as a means to offset decreased sales brought on by factory closures and the unavailability of tried-and-true retail venues, like cruise ships and smoke shops. Now sales in traditional channels are rebounding.

Analysts predict the global cigar and cigarillo market to **grow at a rate of 4.3% annually**. They note that though consumers may use fewer cigars and cigarillos, they're willing to **spend more to "maximize indulgence."** **High tax rates** on cigarettes are also encouraging more smokers to switch to these products, which tend to be taxed at lower rates than cigarettes.

The global luxury cigar market was valued at $11.6 billion in 2020 and is expected to **grow at a rate of 7.2% annually**. Experts attribute growth to a rise in hotel cigar lounges, as well as increased tobacco use among millennials.

While cigarettes can't be sold online, the internet remains a lucrative sales channel for cigars with global online sales expected to **expand at a rate of more than 6% annually**.

U.S. LUXURY CIGAR MARKET



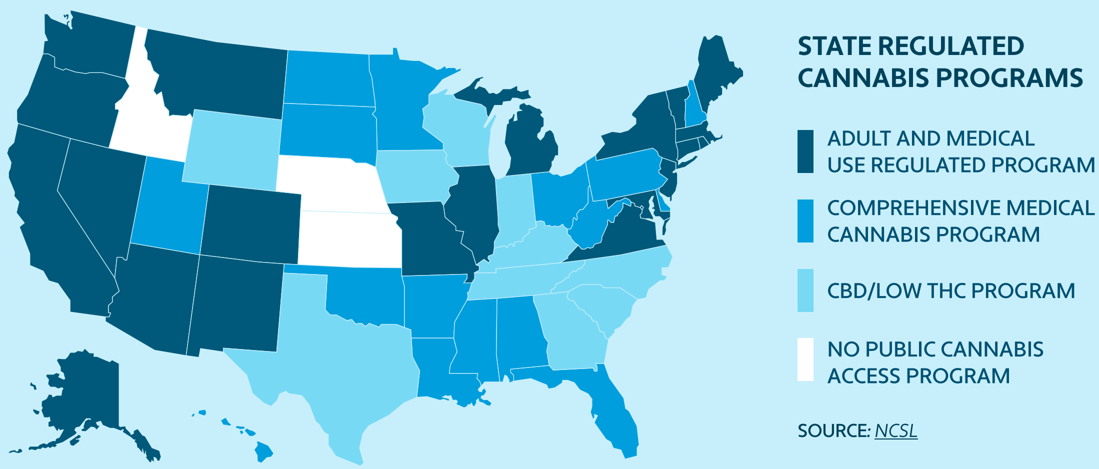
SOURCE: *Grand View Research*

Other issues likely to affect the tobacco and vape industries in 2023

EASING OF RESTRICTIONS ON CANNABIS BUSINESSES GENERATES TALK AT FEDERAL LEVEL

Another issue sure to see developments in 2023 is cannabis. It's been a decade since Colorado and Washington legalized the sale of recreational marijuana, and today, adult-use cannabis is legal in more than **21 states**. Another five or six states are actively pursuing legalization. Yet because the federal government still classifies cannabis as a Schedule 1 controlled substance, cannabis businesses are blocked from using FDIC banks and prohibited from taking the tax deductions available to other businesses.

President Biden has asked the Health and Human Services Department and the U.S. Attorney General to review how marijuana is regulated under federal law. It's a start to a conversation that's been a long time in coming, and what happens next will also take time to unfold. "Declassifying cannabis would take considerable time," says Scott Peterson, VP of Government



SOURCE: *NCSL*

Relations at Avalara. “It would also likely be challenged in court and in Congress.”

COMPLIANCE COMPLEXITY SWELLS AS MORE STATES TAX VAPING PRODUCTS

Currently, 33 states and the District of Columbia collect taxes on vaping products. Compare that to 2015, when only three states and the District of Columbia taxed e-cigarettes, and it’s easy to see how **tax compliance for the vaping industry has grown increasingly complex**.

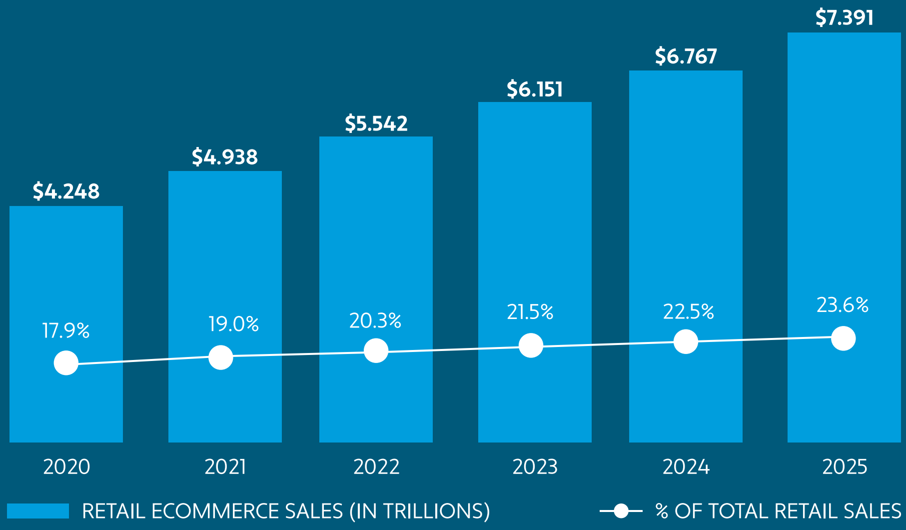
While additional states are likely to impose excise tax on vape products, some holdouts remain. Alaska’s governor **vetoed a bill** that would have taxed electronic cigarettes and increased the age to legally possess tobacco products from 19 to 21, explaining that the tax increase would have been too significant. Certain municipalities within the state collect a local tax, including Anchorage and Juneau.

Global tax

Growing international sales is a top priority for many businesses. Companies based outside of the United States want to crack the American market, while U.S. businesses crave more customers abroad. Getting international tax compliance right is a critical step to growing cross-border sales.

Global tax

RETAIL ECOMMERCE SALES WORLDWIDE, 2020-2025



SOURCE: *eMarketer*

RETAIL MCOMMERCE (MOBILE COMMERCE) SALES WORLDWIDE, 2020–2025

	2020	2021	2022	2023	2024	2025
RETAIL MCOMMERCE SALES (TRILLIONS)	$2.721	$3.203	$3.643	$4.089	$4.541	$4.999
% CHANGE	29.2%	17.7%	13.7%	12.3%	11.1%	10.1%
% OF TOTAL ECOMMERCE SALES	64.1%	64.9%	65.7%	66.5%	67.1%	67.6%
% OF TOTAL RETAIL SALES	11.5%	12.3%	13.3%	14.3%	15.1%	16.0%

SOURCE: *eMarketer*

COST TO SHIP A CONTAINER ACROSS THE PACIFIC

SOURCE: *PYMNTS*

$19,000 IN **2021**

$14,500 IN EARLY **2022**

$3,900 IN AUTUMN **2022**

International shipping woes continue

Remember 2021, when shipping was so costly and spots on container ships were so hard to come by that some large retailers leased or purchased their own containers? Global shipping has improved since then. But it's still not great.

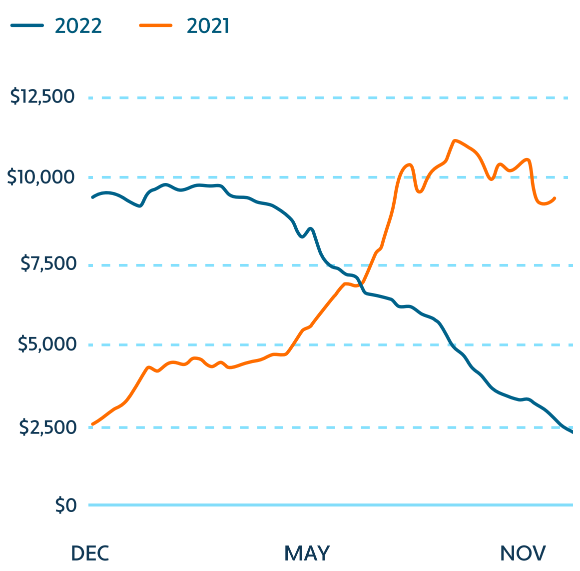
According to logistics company **Freightos**, the freight rate in October 2022 was 68% lower than the rate in October 2021, but 170% higher than the pre-pandemic rate in October 2019. In fact, in November 2022, some lane prices were 400% higher than they were before COVID-19.

Crossing oceans is just one step in what remains an arduous supply chain journey. Labor issues at ports may delay docking. There's also sticker shock at the pump. And shipments could have to navigate trucking logjams in much of Europe, rail backlogs and overcrowded warehouses in the U.S., and postal strikes in the U.K. There will likely be other bumps in the road too.

The takeaway? Though some aspects of international shipping appear to be stabilizing, supply chain challenges aren't going away any time soon.

Tax compliance is another hurdle businesses selling internationally must jump.

INTERNATIONAL CONTAINER FREIGHT PRICING TRENDS, YEAR OVER YEAR



SOURCE: *Freightos*

GLOBAL TAX

Online marketplaces do the heavy compliance lifting in the EU, UK, and US

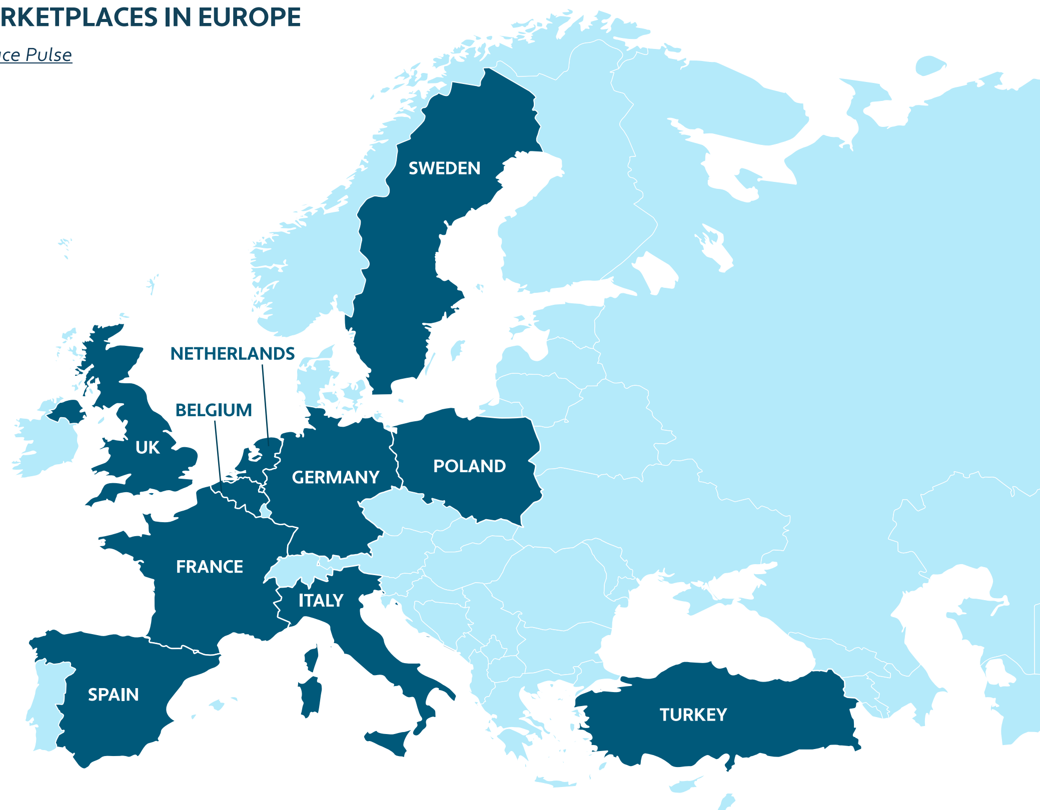
Amazon facilitates sales in **21 countries** and counting as of October 2022. Other online marketplaces are also putting more resources into global expansion, with good reason. Third-party marketplace sales are on track to be the largest and fastest-growing retail channel globally, accounting for **38%** of all global retail sales growth by 2027.

To succeed as they grow, marketplaces will need to lean on tools and technology that can help ease the burden of international tax compliance. Expanding marketplaces already have a long to-do list in the United States.

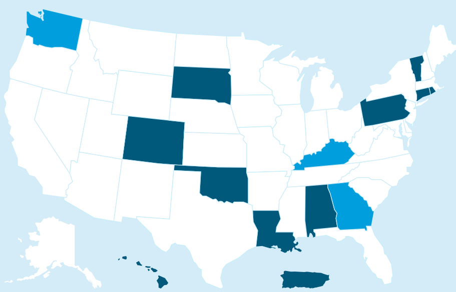
Most states require most marketplaces to collect and remit sales tax on behalf of third-party sellers. In states where they don't have nexus, marketplaces may need to comply with **non-collecting seller use tax reporting and notification requirements**. And a growing number of states, including **Arkansas**, **California**, **Georgia**, and Ohio, are making marketplaces take steps to ensure **high-volume sellers** are legitimate.

AMAZON MARKETPLACES IN EUROPE

SOURCE: *Marketplace Pulse*



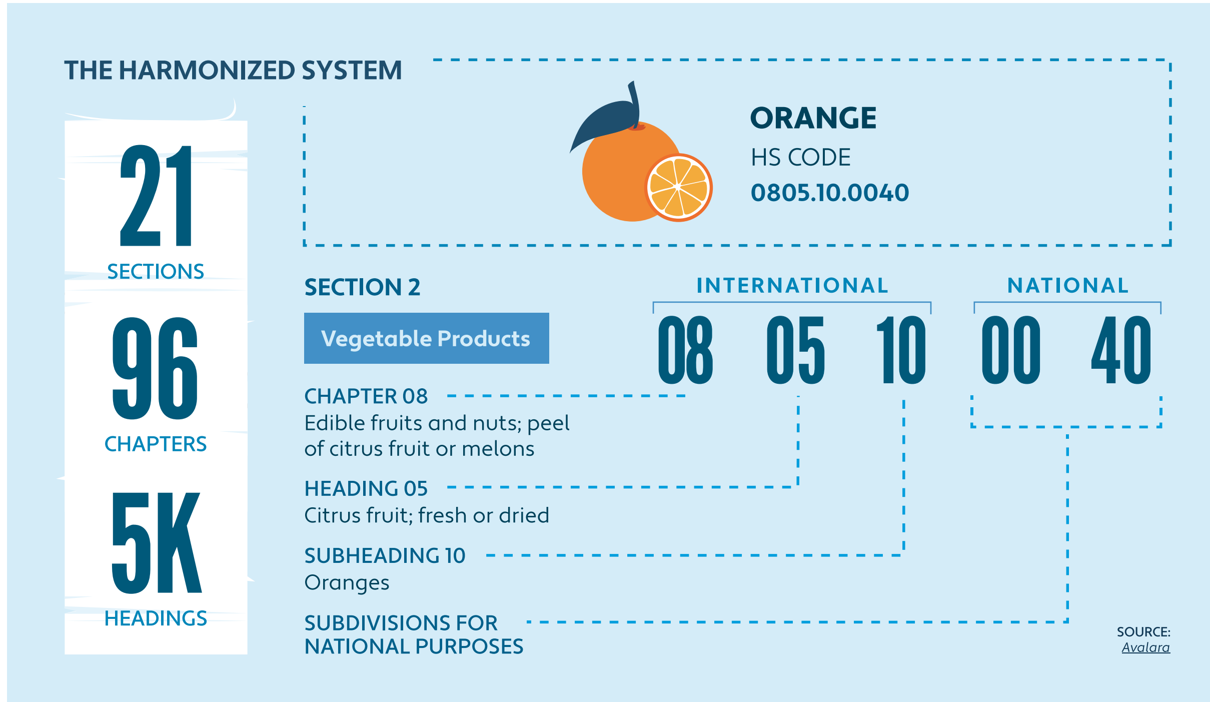
NON-COLLECTING SELLER USE TAX REPORTING REQUIREMENTS BY STATE



STATES WITH NON-COLLECTING USE TAX REPORTING LAWS

STATES THAT REPEALED NON-COLLECTING SELLER USE TAX REPORTING LAWS

SOURCE: *Avalara*



Facilitating international sales adds more layers of compliance complexity on marketplaces.

The United Kingdom and European Union now require online marketplaces, as the deemed supplier, to collect, remit, and report value-added tax (VAT) on certain transactions. In the U.K., marketplaces must identify the value of each transaction, where each seller's goods were at the time of sale, and whether the seller is a U.K. or foreign business.

If goods were shipped from the U.K., the marketplace must indicate whether the seller is a U.K. resident. If the seller is an overseas business, the marketplace is responsible for charging and remitting VAT. When goods are shipped to U.K. consumers from outside of the U.K., the marketplace is responsible for VAT on all consignments under £135. All this information must be recorded and the records maintained for six years.

The EU also requires marketplaces to record the value of goods, as different rules apply for imports valued above and below €150. Transactions involving a non-EU seller fulfilling orders from a warehouse in the EU for a European consumer face additional deemed seller requirements, no matter the value of the goods sold. And marketplaces must retain electronic records of third-party sales in the EU for 10 years.

It's complicated, and these obligations are in addition to the day-to-day tasks international sellers already must do, such as assigning the proper **Harmonized System** (HS) code to every product that crosses a border, processing payments in multiple currencies, and complying with all VAT and other tax requirements.

Moving invoicing and reporting online and to the cloud can help.

GLOBAL TAX

The digitalization of global tax compliance: It's happening

A new VAT system for online shopping took effect in the EU on July 1, 2021. The changes included the implementation of **Import One-Stop Shop** (IOSS), an online system for ecommerce firms selling into the EU from outside the block, and **One-Stop Shop** (OSS), an electronic portal through which EU-based online sellers can register and "take care of all their **VAT obligations** for their sales across the whole of the EU."

According to the **European Commission**, creating a more level playing field for all businesses, simplifying cross-border ecommerce, and introducing greater transparency for EU shoppers have "delivered strong results." Member states collected about €1.9 billion in VAT revenues in the first six months alone. By March 15, 2022, more than 8,000 traders had registered to use IOSS.

Participation in IOSS and OSS is optional, but a **growing number of countries** are implementing mandatory registration and reporting requirements for foreign ecommerce sellers, shifting VAT collection from the customs border to the point of sale. As well as increasing tax revenue by targeting foreign businesses, tax authorities are increasingly looking to digital reporting and electronic invoicing requirements to hamper tax evasion and boost VAT collections domestically.

NEW VAT REQUIREMENTS FOR ONLINE SALES RESULTED IN

€1.9B IN REVENUES FOR MEMBER STATES IN THE FIRST SIX MONTHS

OR ROUGHLY

€3.8B ANNUALLY

SOURCE: *European Commission*

E-INVOICING AND DIGITAL REPORTING MANDATES ARE SPREADING

"E-invoicing is the clear direction of travel for tax authorities globally," says Alex Baulf, senior director of Global Indirect Tax at Avalara. "To comply with the growing list of mandates, tax, finance, and IT professionals need advanced knowledge of upcoming e-invoicing mandates. Understanding **e-invoicing terminology** and nuances is also critical, as requirements around the globe have both differences and similarities."

Here are some **upcoming developments** on the e-invoicing front:

- **Portugal** requires PDF invoices to have a digital signature as of January 1, 2023, and requires businesses to add a unique document code to invoices, in addition to the existing requirements to add a QR code and use certified billing software.

- **Serbia** implements e-invoicing requirements effective January 1, 2023, while Saudi Arabia rolls out phase two of an e-invoicing mandate between January 1, 2023, and June 30, 2023. Japan will launch a new tax invoice system for Japanese Consumption Tax on October 1, 2023, when it could also require e-invoicing.

- Poland will mandate B2B e-invoicing starting January 1, 2024. Spain's on track to mandate B2B e-invoicing in 2024 too.

- France will implement mandatory B2B e-invoicing and e-reporting for B2C and cross-border sales and purchases starting July 1, 2024. All businesses will need to be able to receive electronic invoices from that date forward. The French government has confirmed that **penalties** will apply to businesses that fail to follow applicable e-invoicing requirements.

The European Commission is exploring a move to a harmonized common standard for domestic B2B e-invoicing across the EU. It's also considering gradually introducing obligatory e-invoicing across the EU. Alex Baulf predicts one of the EU's main proposals under the VAT in the Digital Age initiative will be a new Pan-European digital reporting requirement, to replace the current European Sales List requirement for intra-community sales.

"The transition to digital tax compliance is picking up steam around the world," says Liz Armbruester, EVP of Customer and Compliance Operations at Avalara. "While the purpose is simplification and efficiency, the transformation process can be both long and challenging for businesses. The U.K.'s digitization program began with VAT but future phases include income tax self-assessment and corporation tax. Businesses everywhere would be wise to build their own transformation plans to accommodate the shift to digital for all of their tax compliance." **E-invoicing software can help**.

THE UK MADE TAX DIGITAL

As of November 1, 2022, the U.K.'s **Making Tax Digital** (MTD) program is in full effect. Having eased taxpayers into the new system April 1, 2022, **HM Revenue & Customs** (HMRC) has turned off the ability for businesses to file monthly or quarterly U.K. VAT returns through legacy web-based VAT online accounts. Affected businesses must sign up for Making Tax Digital for VAT.

The most significant new requirement, and arguably the most challenging for businesses, is the requirement to ensure there are clear "digital links" between the underlying digital records of the transactions and the final U.K. VAT return that's submitted via an API link. In practice this means there must be a digital audit trail relating to the movement or modification of the tax and transactional data in the digital records. This means the days of copy and paste within a spreadsheet are over.

GLOBAL TAX

Other issues likely to affect global tax compliance in 2023

DIGITAL SERVICES TAXES

Many countries have introduced or plan to introduce legislation requiring foreign businesses to register for VAT or goods and services tax (GST) and charge, collect, and remit the tax on sales of digital services to consumers. The first digital services tax legislation was put forward in the EU in 2003. Today, more than 100 jurisdictions globally have introduced similar rules. **Digital services tax** requirements are complex, varied, and difficult to navigate; they include low thresholds, identifying and evidencing customer location, and different rules on invoicing, currency, and exchange rates.

COUNTRIES APPLYING VAT/GST ON DIGITAL SERVICES

EUROPEAN UNION (27 MEMBER STATES)
ANDORRA
ALBANIA
ALGERIA
ANGOLA
ARMENIA
ARGENTINA
AUSTRALIA
AZERBAIJAN
BAHAMAS
BAHRAIN
BANGLADESH
BELARUS
BRAZIL
CAMEROON
CANADA
CANADA, BRITISH COLUMBIA
CANADA, QUEBEC
CANADA, SASKATCHEWAN
CHILE
CHINA
COLOMBIA
COSTA RICA
ECUADOR
EGYPT
FIJI
GHANA
ICELAND
INDIA
INDONESIA
ISRAEL
JAPAN
KAZAKHSTAN
KENYA
MALAYSIA
MAURITIUS
MEXICO
MOLDOVA
MOROCCO
NEW ZEALAND
NIGERIA
NORWAY
OMAN
PARAGUAY
PHILIPPINES
PERU
RUSSIA
SAUDI ARABIA
SERBIA
SINGAPORE
SOUTH AFRICA
SOUTH KOREA
SWITZERLAND
TAIWAN
TAJIKISTAN
TANZANIA
THAILAND
TUNISIA
TURKEY
UGANDA
UKRAINE
UNITED ARAB EMIRATES
UNITED STATES
URUGUAY
UZBEKISTAN
VIETNAM
ZIMBABWE

SOURCE: *Avalara*

ENVIRONMENTAL TAXES

Governments worldwide are turning to tax policy to help encourage sustainable choices.

For example, the U.K. implemented a new **plastic packaging tax** on April 1, 2022, at a rate of £200 per tonne. **Italy** and **Spain** began taxing certain plastic packaging on January 1, 2023, and other countries will likely tax plastic packaging eventually – especially since the **EU** now requires member states to make an annual contribution based on the amount of non-recycled plastic packaging waste each member produces.

EXPANDING E-INVOICING REQUIREMENTS

Multinational businesses will need to learn how to navigate a labyrinth of expanding e-invoicing requirements. Sooner or later, nearly every country will digitalize tax compliance to some extent. It will fall to businesses to keep track of new requirements in each jurisdiction, update systems so they can comply with new mandates, and manage the continual flood of changes.

Visit the **Avalara Tax Desk** to keep your finger on the pulse of ongoing global tax changes.

Plastic tax

UNITED KINGDOM

£200

TOOK EFFECT
1 April 2022

PER TONNE OF CHARGEABLE PLASTIC PACKAGING COMPONENTS

ITALY

€0.45

TOOK EFFECT
1 January 2023

PER KILOGRAM OF NON-RECYCLED PLASTIC PACKAGING

SPAIN

€0.45

TOOK EFFECT
1 January 2023

PER KILOGRAM OF VIRGIN PLASTIC

SOURCES: *KPMG (U.K.)*, *EY (Spain)*, *EY (Italy)*

Looking ahead

It's probably impossible to cover every sales tax change in one report, so we aimed to spotlight the biggest headlines impacting the tax landscape ... and your business. Leading tax experts take a deeper dive into some of the most pressing issues affecting tax compliance in our **Avalara Tax Changes 2023 webinar**.

FOR MORE RESOURCES:

- Stop by the **Avalara Tax Desk** for breaking tax news
- Read about VAT changes in the **EU and U.K**.
- Check out the **Avalara resource center** for extensive tax compliance content
- Learn how tax changes mentioned in this report may affect your obligations with a free **sales tax risk assessment**

Or give us a call at **877-352-4646**. 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.

Avalara